

CITY OF DURHAM, NORTH CAROLINA

PROJECT MANUAL

INCLUDING

**BIDDING DOCUMENTS, CONTRACT DOCUMENTS, AND
TECHNICAL SPECIFICATIONS**

FOR

DURHAM



1 8 6 9
CITY OF MEDICINE

CONTRACT: ER-5100 EA

2010 STREETSCAPE REPLACEMENT

Urban Forestry Division, General Services Department
101 City Hall Plaza, Durham, NC 27701

CONTRACT Urban Streetscape Replacement

2009

Streetscape Replacement

**URBAN FORESTRY DIVISION
GENERAL SERVICES DEPARTMENT
CITY OF DURHAM, NORTH CAROLINA**

**CITY OF DURHAM
MAYOR AND CITY COUNCIL**

William V. Bell, Mayor

**Cora M. Cole-McFadden
Diane N. Catotti
Eugene A. Brown**

**Howard Clement, III
J. Michael Woodard
Farad Ali**

CITY STAFF

Thomas J. Bonfield, City Manager
Patrick W. Baker, City Attorney
D. Ann Gray, City Clerk
Joel V. Reitzer, Director of General Services
Chris D. Boyer, Assistant Director of General Services
Kevin P. Lilley, Facility Operations Manager of
Landscape Services and Urban Forestry

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2010 STREETSCAPE REPLACEMENT

URBAN FORESTRY DIVISION
DEPARTMENT OF GENERAL SERVICES
CITY OF DURHAM, NORTH CAROLINA

INVITATION TO BID

Contract: ER 5100 EA

Project: 2010 Streetscape Replacement

Owner:

City of Durham
101 City Hall Plaza
Durham, North Carolina 27701

Engineer/Issuing Office:

Attention: Alex Johnson, RF, CA
City of Durham
Department of General Services
Urban Forestry Division
101 City Hall Plaza
Durham, North Carolina 27701
(919) 560-4137 ext. 21275
Date: 10/5/09

The City of Durham will open sealed formal Bids submitted by prequalified Bidders at 1:00 pm on 10/28/09 for Contract ER 5100 EA, Project: 2010 Streetscape Replacement in the Department of General Services Conference Room 136, Ground Floor, 201 Fay St., Durham, North Carolina. The Project involves the furnishing of all materials, labor, equipment, tools, etc. unless otherwise specified, for the complete repair and installation of trees at specific locations along the 700 through 1200 blocks of North Duke Street and the 600 through 1200 blocks of North Gregson Street in the City of Durham. The Project Manual may be viewed and downloaded, free of charge, from the City of Durham, Department of Finance, Purchasing Division web site:
<http://www.durhamnc.gov/departments/purchasing/bids.cfm>.

Bidders are encouraged to attend the pre-Bid conference at 1:00pm on 10/14/09 in the Department of General Services Conference Room, 136, Ground Floor, 201 Fay St., Durham, North Carolina.

Each Bidder must be pre-qualified by NCDOT, See website for details:

<http://www.ncdot.org/business/howtogetstarted/>

All contractors whose work will count towards the DBE goal must be certified by NCDOT.

The City Council of the City of Durham reserves the right to reject any or all of the Bids. All Bids must include a non-collusion affidavit.

To ensure that all Bidders using the Purchasing Division's web site are kept up to date on any Addenda, changes, or information notices, please send an e-mail to alexander.johnson@durhamnc.gov indicating your intention to prepare a Bid for the Project. Failure to complete this step may render your Bid as nonresponsive.

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Each Bidder is advised that the Work may be inspected and supervised by an Arborist or Horticulturalist under the direction of the City of Durham. The Arborist or Horticulturalist may also be involved in the identification of specific repair areas and the proposed method of repairs for the Site Work.

Contract: ER 5100 EA

Project: 2010 Streetscape Replacement

Sites:

ER 5100 EA DU Street Tree Replacement along the 700 – 1200 blocks of North Duke St.

ER 5100 EA GR Street Tree Replacement along the 600 – 1200 blocks of North Gregson St.

The City of Durham requires the Project to be completed in 90 calendar days from date of Notice to Proceed.

No Bid shall be considered or accepted unless at the time of its filing the same shall be accompanied by a deposit of cash or a certified or cashier's check drawn on a bank or trust company insured by the Federal Deposit Insurance Corporation (FDIC), in an amount equal to five percent (5%) of the amount of the Bid. The check shall be made payable to the City of Durham. Said deposit shall guarantee that the Contract will be entered into by the successful Bidder if the award is made. Such deposit of cash or certified or cashier's check may be held by the City until the successful Bidder has executed and delivered the Contract Documents, including performance and payment bond, to the City of Durham and returned or kept in accordance with North Carolina General Statute 143-129.

Refer to other Bidding requirements described in Document 00 21 15 and Document 00 31 00.

In lieu of the cash deposit or certified or cashier's check mentioned above, the Bidder may file a Bid bond in the same amount executed by a corporate surety authorized to execute such bonds in North Carolina and conditioned as provided by North Carolina General Statute 143-129 and in the form attached to the Bidding Documents (see Appendix F) or on file with the Arborist. Bid bond forms enclosed as part of the Bidding Documents must be properly executed at the time Bids are submitted before Bid will be considered. Properly executed Power of Attorney of the corporate surety's agent shall accompany such bond and be attached to the page provided therefore in the Bidding Documents.

Bids shall be submitted under a condition of irrevocability, except as required by law, for a period of ninety (90) days after Bid opening.

The City of Durham reserves the right to accept or reject any or all Bids.

END OF SECTION

SECTION: 00 11 16 - Invitation To Bid

DOCUMENT 00 21 15

INSTRUCTIONS TO BIDDERS - EJCDC

1.1 SUMMARY

- A. Document Includes:
 - 1. Defined terms.
 - 2. Copies of Bidding Documents.
 - 3. Qualifications of Bidders.
 - 4. Examination of Bidding Documents, other related data, and Site.
 - 5. Pre-Bid conference.
 - 6. Site and other areas.
 - 7. Interpretations and Addenda.
 - 8. Bid security.
 - 9. Contract Times.
 - 10. Liquidated damages.
 - 11. Substitute and “or-equal” items.
 - 12. Subcontractors, suppliers, and others.
 - 13. Preparation of Bid.
 - 14. Basis of Bid; comparison of Bids.
 - 15. Submittal of Bid.
 - 16. Modification and withdrawal of Bid.
 - 17. Opening of Bids.
 - 18. Bids to remain subject to acceptance.
 - 19. Evaluation of Bids and award of Contract.
 - 20. Contract security and insurance.
 - 21. Signing of Agreement.
 - 22. Sales and use taxes.
- B. Related Documents:
 - 1. Document 00 11 16 - Invitation to Bid.
 - 2. Document 00 31 00 - Available Project Information.
 - 3. Document 00 41 43 - Bid Form - Unit Price (Single-Prime Contract).
 - 4. Document 00 72 15 - General Conditions – EJCDC Stipulated Sum (Single-Prime Contract).
 - 5. Bond types and values.
- C. Notice of Bidding Documents and Contract Documents Provision Changes and Updates
 - 1. The Bidder is advised that these Bidding Documents and Contract Documents include numerous changes, revisions, and updates from prior City of Durham contracts.

SECTION: 00 21 15 - Instructions To Bidders – EJCDC

1.2 DEFINED TERMS

- A. Refer to Article 1 of the General Conditions.

1.3 COPIES OF BIDDING DOCUMENTS

- A. The Bidding Documents are identified as “Project Manual including Bidding Documents, Contract Documents, and Technical Specifications for Contract ER 5100 EA, Project: 2010 Streetscape Replacement”
- B. Bidding Documents are on file in the Department of General Services, Urban Forestry Division, Main Floor, 2011 Fay St., Durham, North Carolina. Copies of the Bidding Documents and Project Manual may be viewed and downloaded from the City of Durham, Department of Finance, Purchasing Division web site: <http://www.durhamnc.gov/departments/purchasing/bids.cfm>.
- C. To ensure that all Bidders using the Purchasing Division’s web site are kept up to date on any Addenda, changes, or information notices, please send an e-mail to alexander.johnson@durhamnc.gov indicating your intention to prepare a Bid for the Project. Failure to complete this step may render your Bid as non-responsive.
- D. Complete sets of Bidding Documents shall be used in preparing Bids; neither the City of Durham nor the Arborist assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- E. Upon receipt of Bidding Documents, Bidder shall verify that the Bidding Documents are complete. The Bidder shall notify the Arborist if they have received incomplete Bidding Documents.
- F. The City of Durham and Arborist, in making copies of the Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

1.4 QUALIFICATIONS OF BIDDERS

- A. Notice Under the Americans with Disabilities Act (ADA):
 - 1. The City of Durham will not discriminate against qualified individuals with disabilities on the basis of disability. Anyone who requires an auxiliary aid or service for effective communications, or assistance to participate in a City program, service, or activity, should contact:

Attention: Stacey Poston
ADA Coordinator
City of Durham
Department of General Services
Administration Division
101 City Hall Plaza

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URBAN FORESTRY DIVISION
DEPARTMENT OF GENERAL SERVICES
CITY OF DURHAM, NORTH CAROLINA

Durham, North Carolina 27701
Phone: (919) 560-4197
TTY: (919) 560-4809
E-mail: stacey.poston@durhamnc.gov

All such requests should be submitted as soon as possible but no later than forty eight (48) hours before any scheduled event.

- B. The Contractor shall demonstrate the ability to complete a majority of all portions of the Contract using equipment and personnel owned and employed by the Contractor. The Contractor shall include the following information in the Bid in the spaces provided:
1. The number of years the Contractor has been regularly engaged in similar Contract municipal work and a list of projects they have completed with their equipment and personnel.
 2. A list of the Contractor's personnel experienced to do the Work including the Superintendent to be in charge of the Work, including the length of their experience with this type of municipal work.
 3. A list of the Contractor's equipment in good condition and suitable for completion of the Contract.
- C. Miscellaneous
1. If the Contractor fails to demonstrate the ability to complete a majority of all portions of the Contract with equipment and personnel owned and employed by the Contractor, the Bid may be considered non-responsive.
 2. The Contractor shall be licensed under Chapter 87 of the North Carolina General Statutes as a General Contractor. The Privilege License of the Contractor shall be included in the Bid.
 3. A Privilege License for all Subcontractors of the apparent Successful Bidder, and those Bidders requested by the City of Durham, shall be filed within five (5) days after the Bid opening.
 4. City of Durham Privilege Licenses may be obtained from the Department of Finance, Treasury Management Division, located at 101 City Hall Plaza, Durham, North Carolina, (919) 560-4700.

1.5 EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE

- A. Subsurface and Physical Conditions
1. The Bidder has access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies. Bidder shall comply with all applicable Laws and Regulations relative to excavation and utility locates.

SECTION: 00 21 15 - Instructions To Bidders – EJCDC

- B. Reference is made to Paragraph 7.04 of the General Conditions for the identification of the general nature of other work that is to be performed at the Site by the City of Durham or others (such as utilities and other contractors) that relates to the Work contemplated by these Bidding Documents. On request, the City of Durham will provide to each Bidder for examination access to or copies of Contract Documents (other than portions thereof related to price) for such other work.
- C. It is the responsibility of each Bidder before submitting a Bid to:
1. examine and carefully study the Bidding Documents, the other related data identified in the Bidding Documents, and any Addenda;
 2. visit the Site and become familiar with and satisfy Bidder as to the general, local, and site conditions that may affect cost, progress, and performance of the Work;
 3. become familiar with and satisfy Bidder as to all federal, state, and local, Laws and Regulations that may affect cost, progress, and performance of the Work;
 4. carefully study all:
 - a. reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in Paragraph 4.02 of the General Conditions.
 5. Conduct and carefully study (or accept consequences of not doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying and specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto;
 6. agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents;
 7. become aware of the general nature of the Work to be performed by the City of Durham and others at the Site that relates to the Work as indicated in the Bidding Documents;
 8. correlate the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents;

9. promptly give Arborist written notice of all conflicts, errors, ambiguities, omissions, or discrepancies that Bidder discovered in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder; and
 10. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.
- I. The submission of a Bid will constitute an incontrovertible representation by the Bidder that Bidder has complied with every requirement of this Paragraph 1.5, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given Arborist written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by Arborist are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performing and furnishing of the Work.

1.5 PRE-BID CONFERENCE

- A. A pre-Bid conference will be held at 1:00pm 10/14/09 in the Department of General Services Conference Room 136, Ground Floor, 2011 Fay St. Durham, North Carolina. Representatives of the City of Durham, Arborist will be present to discuss the Project. Bidders are encouraged to attend and participate in the conference. Engineer will transmit to all prospective Bidders of record such agenda as Engineer considers necessary in response to questions arising from the conference. Oral statements may not be relied upon and shall not be binding or legally effective.

1.6 SITE AND OTHER AREAS

- A. The Site is identified in the Bidding Documents. Right-of-Entry and easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by the City of Durham unless otherwise provided in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by the Contractor.

1.8 INTERPRETATIONS AND ADDENDA

- A. All questions about the meaning or intent of the Bidding Documents are to be submitted to Arborist in writing. Interpretations or clarifications considered necessary by Arborist in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by Arborist as having received the Bidding Documents.

All Addenda will also be posted on the City of Durham, Department of Finance, Purchasing Division web site: <http://www.durhamnc.gov/departments/purchasing/bids.cfm>. Questions received less than seven (7) days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications shall be without legal effect.

- B. Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by the City of Durham or Arborist.

1.9 BID SECURITY

- A. No Bid shall be considered or accepted unless at the time of its filing the same shall be accompanied by a deposit of cash or a certified or cashier's check drawn on a bank or trust company insured by the Federal Deposit Insurance Corporation (FDIC), in an amount equal to five percent (5%) of the amount of the Bid. The check shall be made payable to the City of Durham. Said deposit shall guarantee that the Contract shall be entered into by the Successful Bidder if the award is made.
- B. In lieu of the cash deposit or certified or cashier's check mentioned above, the Bidder may file a Bid bond in the same amount executed by a corporate surety authorized to execute such bonds in North Carolina and conditioned as provided by North Carolina General Statute 143-129 and in the form attached to the Bidding Documents or on file with the Engineer. Bid bond forms must be properly executed at the time Bids are submitted before Bid will be considered. Properly executed Power of Attorney of the corporate surety's agent shall accompany such bond and be attached to the page provided therefore in the Contract Documents.
- C. The Bid security of the Successful Bidder shall be retained until such Bidder has executed the Contract Documents, furnished the required contract security and met the other conditions of the Notice to Award, whereupon the Bid Security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within fifteen (15) days after the Notice of Award, the City of Durham may annul the Notice of Award and the Bid Security of that Bidder will be forfeited. The Bid security of other Bidders whom the City of Durham believes to have a reasonable chance of receiving the award may be retained by the City of Durham until the earlier of seven (7) days after the Effective Date of the Agreement or sixty-one (61) days after the Bid opening, whereupon Bid security furnished by such Bidders will be returned.
- D. Bid security of other Bidders who the City of Durham believes do not have a reasonable chance of receiving the award will be returned within seven (7) days after the Bid opening.

- E. In the event the Contract is not awarded, all Bid securities will be returned within seven (7) days after the Bid opening.

1.10 CONTRACT TIMES

- A. The number of days within which, or the dates by which, the Work is to be substantially completed and ready for final payment are set forth in the Agreement.

1.11 LIQUIDATED DAMAGES

- A. Provisions for liquidated damages, if any, are set forth in the Agreement.

1.12 SUBSTITUTE AND “OR-EQUAL” ITEMS

- A. The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration of possible substitute or “orequal” items. Whenever it is specified or described in the Bidding Documents that a substitute or “or-equal” item of material or equipment may be furnished or used by the Contractor if acceptable to the Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Agreement.

1.13 SUBCONTRACTORS, SUPPLIERS, AND OTHERS

- A. A Privilege License for all Subcontractors must be filed within five (5) days after the Bid opening.
- B. All Bidders are required to comply with NCDOT’s DBE program detailed in Appendices A,C, and D.
- C. The City of Durham reserves the right to reject a proposed Subcontractor for reasonable cause.
- E. The General Conditions, Paragraph 6.06, require the identity of certain Subcontractors, Suppliers, individuals, or entities to be submitted to the City of Durham in advance of a specified date prior to the Effective Date of the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall within five (5) days after Bid opening, submit to the City of Durham a list of all such Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, individual, or entity if requested by the City of Durham.

If the City of Durham or Arborist, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, the City of Durham may, before the Notice of Award is given, request apparent Successful Bidder to submit a substitute, without an increase in the Bid.

- F. If apparent Successful Bidder declines to make any such substitution, the City of Durham may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, individuals, or entities. Declining to make requested substitutions will not constitute grounds of forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which the City of Durham or Engineer makes no written objection prior to giving of the Notice of Award will be deemed acceptable to the City of Durham and Engineer subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Paragraph 6.06 of the General Conditions.
- G. Contractor shall not be required to employ any Subcontractor, Supplier, individual, or entity against whom Contractor has reasonable objection.

1.14 PREPARATION OF BID

- A. The approved Bid form is included with the Bidding Documents. Additional copies may be obtained from the Arborist. All Bids must be submitted on the approved Bid form.
- B. The unit prices for specific items shall reflect all costs associated with furnishing, installing all items of Work as indicated on the Drawings and Technical Specifications, complete, in place and accepted, per the City of Durham Standards and Specifications, North Carolina Department of Transportation (NCDOT) Standards and Specifications, and the North Carolina Department of Environment and Natural Resources (NCDENR) Erosion and Sediment Control Planning and Design Manual.
- C. All blanks on the Bid form shall be completed by printing in ink or by typewriter and the Bid signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid form. A Bid price shall be indicated for each unit price item listed therein, or the words "No Bid," "No Change," or "Not Applicable" entered.
- D. The omission of prices for any item on the Bid form, or the tendering of any unbalanced Bid may be the cause for the rejection of the submitted Bid.
- E. The estimated quantities contained on the Bid form are for the purpose of comparing Bids. While the quantities are close approximations, they are not guaranteed. Payment will be made on the basis of the Work as actually executed at the unit prices set forth in the executed Agreement and under the provisions of such Agreement.

- F. There shall be no additional compensation to the Contractor for materials, equipment, or work that is incidental to the successful completion of the Contract. Incidental costs include the costs inherent to the complete installation of those individual items included on the Bid form. For example, those costs associated with water supply, waste disposal, temporary electrical services, surveying, staking, and storage are incidental and defined within the Technical Specifications of the Bidding Documents.
- G. Item values on the Bid form shall be given as figures (i.e. \$23,000.00) and in writing (i.e. Twenty-three thousand and no/100's dollars).
- H. A Bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. Insert the corporate officer's capacity under each signature. The corporate address and state of incorporation shall be shown below the signatures.
- I. A Bid by a limited liability company shall be executed in the name of the firm by a member in the presence of a witness with signature, and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown below the signature. Affix the limited liability company seal adjacent to the signatures.
- J. A Bid by an individual or sole proprietorship shall be executed with a signature of the individual/sole proprietor in the presence of a witness with signature. Insert the words "Individual/Sole Proprietor" under the signature and show the Bidder's name and official address. Affix the individual/sole proprietor seal adjacent to the signature.
- K. A Bid by a partnership shall be executed in the partnership name and signed by all partners (whose title must appear under the signature) in the presence of a witness with signature, accompanied by evidence of authority to sign. The official address of the partnership shall be shown below the signatures. Affix the partnership seal adjacent to the each partner signature.
- L. A Bid by a joint venture shall be executed by each party of the joint venture under their respective seals in a manner appropriate to each such party as described above for each party type. Provide a single signature sheet for each party to the joint venture.
- M. All names shall be typed or printed in ink below the signatures.
- N. The Bid shall contain an acknowledgment of all Addenda, the numbers of which shall be filled in on the Bid form.
- O. The address and telephone number for communication regarding the Bid shall be shown.

- P. The Bid shall contain evidence of the Bidder's authority and qualification to do business in the State of North Carolina or covenant to obtain such qualification prior to the award of the Contract. Bidder's State of North Carolina contractor license number, if any, shall also be shown on the Bid form.

BASIS OF BID; COMPARISON OF BIDS

- Q. Unit Price
1. Bidders shall submit a Bid on a unit price basis for each item of Work listed on the Bid Schedule.
 2. The total of all estimated prices will be the sum of the Products of the estimated quantity of each item and the corresponding unit price. The final quantities and Contract Price will be determined in accordance with Paragraph 11.03 of the General Conditions.
 3. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.
- R. The Bid price shall include such amounts as the Bidder deems proper for overhead and profit on account of cash allowances, if any, named in the Contract Documents as provided in Paragraph 11.02 of the General Conditions.
- S. Bid prices will be compared after adjusting for differences in the time designated by Bidders for Substantial Completion. The adjusting amount will be determined at the rate set forth in the Contract Documents for liquidated damages for failing to achieve Substantial Completion for each day before or after the time allowed as set forth in the Agreement.

1.15 SUBMITTAL OF BID

- A. Bidders shall be solely responsible for delivery of Bids in the required manner and time.
- B. No Bid shall be accepted or considered unless the complete set of required and executed documents is included with the Contractor's submittal.
- C. With each copy of the Bidding Documents, a Bidder is furnished one separate unbound copy of the Bid form, and, if required, the Bid bond form. The unbound copy of these forms is to be completed and submitted.

- D. Each Bid shall include non-collusion affidavits for the Bidder. Affidavits for all Subcontractors of the apparent Successful Bidder, and those Bidders requested by the City of Durham, must be filed within five (5) days after the Bid opening. Blank Non-Collusion Affidavit Forms can be found in Appendix E.
- E. A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the Advertisement or Invitation to Bid and shall be enclosed in an opaque sealed envelope plainly marked with the following information:
1. Contract: ER 5100 EA
 2. Project: 2010 Streetscape Replacement
 3. Name of Bidder:
 4. Address of Bidder:
 5. Phone Number of Bidder:
 6. Contact Person for Bidder:
 7. Phone Number of Contact:
 8. Bidder's North Carolina General Contractor's License Number:
 9. The above-name Bidder has enclosed, and checked as appropriate, the following items in the Bid (check all):
 - a. Bid Form
 - b. DBE Forms
 - c. Non-Collusion Affidavit of Bidder
 - d. Privilege License of Bidder
 - e. Bid Security
 - f. List of Contractor Equipment and Personnel
- F. Incorrect or incomplete information, or irregularities on the Bid envelope may be cause for a Bid to be declared invalid or informal. Invalid or informal Bids will not be opened.
- G. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate mailing/delivery envelope plainly marked on the outside with the notation "BID ENCLOSED." A mailed Bid shall be addressed to:
Attention: Alex Johnson, RF, CA
City of Durham
Department of General Services - Urban Forestry Division
2011 Fay St.
Durham, North Carolina 27704
- H. Bids submitted after the time listed in the Agreement and Invitation to Bid will be returned to the Bidder unopened.
- I. Bids that are unsigned, improperly signed or sealed, conditional, illegible, obscure, contain arithmetical errors, erasures, alterations, or irregularities of any kind, may be declared unacceptable at the City of Durham's discretion.

- J. Bid Forms, appendices, and enclosures which are improperly prepared may be declared unacceptable at the City of Durham's discretion.
- K. Failure to provide security deposit, bonds, or insurance requirements will invalidate the Bid at the City of Durham's discretion.

1.16 MODIFICATION AND WITHDRAWAL OF BID

- A. Amendments to properly submitted Bids will be permitted when received in writing prior to Bid opening and when endorsed by the same party or parties who signed and sealed the Bid.
- B. Bidders may withdraw their Bid by written request at any time before Bid opening.
- C. No Bidder may withdraw a Bid after Bid opening and prior to the conclusion to the period of time stated in the Bid form except to the extent, if any, that may be required by law.

1.17 OPENING OF BIDS

- A. Bids shall be opened, unless obviously non-responsive, at the time and place indicated in the Advertisement or Invitation to Bid and read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.
- B. Bidders may be present at the opening of Bids.

1.18 BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- A. All Bids will remain subject to acceptance for the period of time stated in the Bid form, but the City of Durham may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

1.19 EVALUATION OF BIDS AND AWARD OF CONTRACT

- A. The contract will be awarded to the lowest responsible, responsive bidder. The City of Durham reserves the right to reject any or all Bids, including without limitation, nonconforming, non-responsive, unbalanced, or conditional Bids. The City of Durham further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to not be responsible. The City of Durham may also reject the Bid of any Bidder if the City believes that it would not be in the best interest of the Project to make an award to that Bidder.

The City of Durham also reserves the right to waive all informalities not involving price, time, or changes in the Work and to negotiate terms with the Successful Bidder.

- B. More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.
- B. In evaluating Bids, the City of Durham will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Bid form or prior to the Notice of Award.
- D. In evaluating Bidders, the City of Durham will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Supplies, and other individuals or entities must be provided as provided in the General Conditions.
- E. The City of Durham may conduct such investigations as the City deems necessary to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, individuals, or entities to perform the Work in accordance with the Contract Documents.
- F. If the Contract is to be awarded, the City of Durham will award the Contract to the Bidder whose Bid is in the best interests of the Project.

1.20 CONTRACT SECURITY AND INSURANCE

- A. Article 5 of the General Conditions sets forth the City of Durham's requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the executed Agreement to the City of Durham, it shall be accompanied by such bonds.

1.21 SIGNING OF AGREEMENT

- A. After the City of Durham has identified the Successful Bidder, the Engineer on behalf of the City of Durham, will issue to the Successful Bidder, a written Notice to Award.

- B. When the City of Durham gives a Notice of Award to the Successful Bidder, it shall be accompanied by the required number of unsigned counterparts to the Agreement with the other Contract Documents which are identified in the Agreement as attached thereto. Within ten (10) days thereafter, Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to the City of Durham. Within fifteen (15) days after execution of the Agreement by the Manager, the City of Durham will deliver one fully signed counterpart to Successful Bidder with a complete set of the maps with appropriate identification.

1.22 SALES AND USE TAXES

The North Carolina General Assembly adopted legislation which required that contractors pay North Carolina Sale and Use Tax on materials, supplies, fixtures, and equipment used by the contractor in the performance of contracts with cities, counties, and towns on contracts dated July 1, 1961 or later.

The North Carolina General Assembly also authorized a refund to cities, counties, and towns of sales and use taxes paid on direct purchases of tangible personal property and construed purchases in the performance of contracts to be direct purchases.

- A. The Bidder shall not include North Carolina Sales and Use Tax in unit price Bid. The Contractor will be reimbursed for all North Carolina Sales and Use Tax paid during any preceding month, at the time the monthly estimate is paid, provided the required submittals are made to the City of Durham. Refer to Paragraph 6.10 of the General Conditions for additional information.

END OF DOCUMENT

DOCUMENT 00 31 00

AVAILABLE PROJECT INFORMATION

1.1 SUMMARY

- A. Document Includes:
 - 1. Project information and location.
 - 2. List of Maps.
 - 3. Planting standards.
- B. Related Documents:
 - 1. 00 21 15 - Instructions to Bidders - EJCDC: Examination of Bidding Documents, other related data, and Site.

1.2 PROJECT INFORMATION AND LOCATION

- A. The Work contemplated under the provisions of this Contract includes, but may not be limited to the preparation of planting sites, the purchase and receipt of plant material, and the installation and maintenance of same through the course of the one (1) year warrantee period..
- B. The Work Sites for this Contract are:
 - 1. ER 5100 EA DU: the 700, 800, 900, 1000 and 1200 blocks of North Duke Street.
 - 2. ER 5100 EA GR: the 600, 700, 800, 900, 1000, 1100, and 1200 blocks of North Gregson Street.

1.3 TREE PLANTING STANDARDS

- A. All Work shall conform to the Tree Planting Standards described herein in Section 32 12 16.

END OF DOCUMENT

CONTRACT: ER -5100 EA
2010 STREETSCAPE REPLACEMENT

URBAN FORESTRY DIVISION
DEPARTMENT OF GENERAL SERVICES
CITY OF DURHAM, NORTH CAROLINA

DOCUMENT: 00 41 43

BID FORM - UNIT PRICE (SINGLE-PRIME CONTRACT)

To: The City of Durham, North Carolina
c/o The City Manager
101 City Hall Plaza
Durham, North Carolina 27701

Date:

Contract: ER 5100 EA

Project: 2010 Streetscape Replacement

Sites: ER 5100 EA DU: the 700, 800, 900, 1000 and 1200 blocks of North Duke Street.

ER 5100 EA GR: the 600, 700, 800, 900, 1000, 1100, and 1200 blocks of North Gregson Street.

Name of Bidder:

Address of Bidder:

.....

.....

Phone Number of Bidder:

Contact Person for Bidder:

Phone Number of Contact:

Bidder's North Carolina General Contractor's License Number:

.....

1. OFFER

The undersigned Bidder hereby declares that the names of all persons interested in this Bid as principals appear in the blank spaces hereinafter provided for such purpose, that this Bid is in all respects fair and without collusion, that the Bidder has examined the locations of the proposed Work, the Advertisement, the Instructions to Bidders, the Technical Specifications, requirements of the North Carolina Department of Transportation Disadvantaged Business Enterprises (DBEs) program, the Contract Documents and bond forms, and the Maps therein referred to and fully understands the same and agrees and accepts the terms and conditions thereof, that it is understood that the estimated quantities are approximate only and are given for the purpose of comparing Bids upon a uniform basis, and that said estimate shall in no way affect the unit prices for the Work.

DOCUMENT: 00 41 43 - BID FORM - UNIT PRICE (SINGLE-PRIME CONTRACT)

The undersigned Bidder hereby agrees to furnish at the Bidder's cost the expense of all the necessary labor, tools, apparatus, machinery, equipment, transportation, and all other things which may be required to fully and properly perform all the terms, covenants, provisions, and agreements of the annexed Contract.

The undersigned hereby agrees to do said Work and furnish said materials as prescribed in the Contract Documents and Technical Specifications, and, according to the Drawings and requirements of the Arborist under said Contract Documents and Technical Specifications, in a first-class manner and to the best of the undersigned's ability at the following unit prices.

Having examined the Site of the Work and all matters referred to in the Instructions to Bidders and the Contract Documents prepared by the Engineer for the Project, we, the undersigned, hereby offer to enter into a Contract to perform the Work for the unit prices listed in this Bid form in lawful money of the United States of America.

We have included the Bid security as required by the Instruction to Bidders.

All applicable federal taxes are included and State of North Carolina taxes are excluded from the unit prices.

All Cash and Contingency Allowances described in Section 01 20 00 - Price and Payment Procedures are included in the Bid Prices.

2. ACCEPTANCE

This offer shall be open to acceptance and is irrevocable, except as required by law, for ninety (90) days from the Bid opening date.

If this Bid is accepted by the City of Durham within the time period stated above, we will:

- Execute the Agreement within fifteen (15) days of receipt of Notice of Award.
- Furnish the required bonds within fifteen (15) days of receipt of Notice of Award.
- Commence Work within ten (10) days after written Notice to Proceed.

If this Bid is accepted within the time stated, and we fail to commence the Work or we fail to provide the required bonds, the Bid security shall be forfeited as damages to the City of Durham by reason of our failure, limited in amount to the lesser of the face value of the security deposit or the difference between this Bid and the Bid upon which a Contract is signed.

In the event our Bid is not accepted within the time stated above, the required security deposit will be returned to the undersigned, in accordance with the provisions of the Instructions to Bidders; unless a mutually satisfactory arrangement is made for its retention and validity for an extended period of time.

CONTRACT: ER -5100 EA
2010 STREETSCAPE REPLACEMENT

URBAN FORESTRY DIVISION
DEPARTMENT OF GENERAL SERVICES
CITY OF DURHAM, NORTH CAROLINA

3. CONTRACT TIME

If this Bid is accepted, we will:

-Complete the Work in 90 calendar days from Notice to Proceed.

4. UNIT PRICES

Contract: ER 5100 EA

Project: 2010 Streetscape Replacement

The following are unit prices for specific portions of the Work as listed. The unit price Bid for items in this Contract are for furnishing, installing all items of Work as indicated on the Maps and Technical Specifications, complete, in place and accepted, per the enclosed Standards and Specifications. The following is the list of unit prices:

CONTRACT: ER -5100 EA
2010 STREETSCAPE REPLACEMENT

URBAN FORESTRY DIVISION
DEPARTMENT OF GENERAL SERVICES
CITY OF DURHAM, NORTH CAROLINA

ER -5100 EA Bid Quantities

Item No.	Description	Estimated Quantities	Units	Price Per Unit	Cost
1	2-1/2" calipper single-stem B&B Cercis Chinensis 'Avondale', installed	27	Ea		
2	2-1/2" calipper single-stem B&B Cercis reniformis var. texensis 'Oklahoma', installed	38	Ea		
3	3" calipper single-stem B&B Lagerstroemia indica x fauriei 'Natchez', installed	10	Ea		
4	3" calipper single-stem B&B Pistacia chinensis, installed	32	Ea		
5	Stumps to be ground to minimum 6' diameter and 24" depth.	27	Ea		
6	Soil samples to be retrieved, submitted, analyzed and used as basis for amendment prescription	214	Ea		
7	Soil amendments: Pine bark, fertilizer, expanded slate aggregate, loam topsoil and lime or sulfur, installed, per site	107	Ea		
8	Site preparation tilling, 6' diameter by 2' depth	107	Ea		
9	Work Zone Safety Equipment rental, delivery, set-up, Duke St.	5	days		
10	Work Zone Safety Equipment rental, delivery, set-up, Gregson St.	5	days		
11	Pre-Emergent Herbicide treatment, applied	107	Ea		
12	Mulch: Triple-shred hardwood, spread	36	Cubic Yards		
13	Watering "bags" (tree Gator, Ooze tube, or equivalent), installed	107	Ea		
14	Tree Watering, April through October 2010	28	weeks		

TOTAL COST BID FOR ER 5100 EA \$ _____

CONTRACT: ER -5100 EA
2010 STREETSCAPE REPLACEMENT

URBAN FORESTRY DIVISION
DEPARTMENT OF GENERAL SERVICES
CITY OF DURHAM, NORTH CAROLINA

Note: The unit prices for items in this contract are for the furnishing of materials and installation of all items of work as indicated in the plans and specifications. Work shall be complete, in place, and accepted as per approved plans, the City of Durham Standards and Specifications, as well as North Carolina Department of Transportation Standards and Specifications.

We agree to diligently perform the Work in accordance with all Contract Documents, to complete such Work within the period as outlined in the Contract, and to begin Work within ten (10) days after receipt of the Notice to Proceed from the Engineer.

CONTRACT: ER -5100 EA
2010 STREETSCAPE REPLACEMENT

URBAN FORESTRY DIVISION
DEPARTMENT OF GENERAL SERVICES
CITY OF DURHAM, NORTH CAROLINA

5. ADDENDA

The following Addenda have been received. The modifications to the Bidding Documents noted below have been considered and all costs are included in the Bid.

Addendum No....., Dated..... Addendum No....., Dated.....

Addendum No....., Dated..... Addendum No....., Dated.....

Addendum No....., Dated..... Addendum No....., Dated.....

6. APPENDICES

The following Documents will be submitted to the Issuing Office within five (5) days after the Bid Opening:

1. Non-Collusion Affidavits of all Subcontractors (see Appendix E for blank affidavits)
2. Privilege Licenses of all Subcontractors (contact the City of Durham, Department of Finance, Treasury Management Division, (919) 560-4700 for information on securing privilege licenses)

The following information is included with Bid submission:

1. Bid Form
2. Non-Collusion Affidavit of Bidder (see Appendix E for blank affidavits)
3. Privilege License of Bidder (contact the City of Durham, Department of Finance, Treasury Management Division, (919) 560-4700 for information on securing privilege licenses)
4. Bid Security (see Appendix F for blank Bid bond forms)
5. List of Contractor Equipment and Personnel

7. CONTRACTOR EXPERIENCE

The undersigned Contractor has regularly engaged in contract work of this class for years,
and has executed the following work as principal(s):

.....

.....

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.....

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.....

List of Contractor’s personnel experienced to do this Work including and designating the Superintendent to be in charge of this Work showing the length of their varied experience with this particular Work. The list shall not include Subcontractor personnel.

Name	Experience	Name	Experience
.....
.....
.....
.....
.....
.....
.....
.....

DOCUMENT: 00 41 43 - BID FORM - UNIT PRICE (SINGLE-PRIME CONTRACT)

CONTRACT: ER -5100 EA
2010 STREETSCAPE REPLACEMENT

URBAN FORESTRY DIVISION
DEPARTMENT OF GENERAL SERVICES
CITY OF DURHAM, NORTH CAROLINA

List of Contractor's equipment in good condition and suitable for completion of this Contract. Contractor must be able to demonstrate ownership of all equipment necessary to complete all portions of the Contract. The list shall not include Subcontractor equipment.

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.....
.....
.....
.....
.....
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.....

Please attach additional sheets as necessary to complete the items above.

8. BID FORM SIGNATURES

Refer to Document 00 21 15 for specific Bid form signature requirements for corporations, partnerships, limited liability companies, individuals, or sole proprietorships.

DOCUMENT: 00 41 43 - BID FORM - UNIT PRICE (SINGLE-PRIME CONTRACT)

CONTRACT: ER -5100 EA
2010 STREETSCAPE REPLACEMENT

URBAN FORESTRY DIVISION
DEPARTMENT OF GENERAL SERVICES
CITY OF DURHAM, NORTH CAROLINA

CORPORATION

The Corporate Seal of

.....
(Bidder - print the full corporate name of firm)

.....
(President/Vice President/Authorized Corporate Officer)

(Seal)

was hereunto affixed in the presence of:

.....
(Secretary/Assistant Secretary)

(Seal)

Corporate Address:

.....

.....

.....

.....
(State of Incorporation)

DOCUMENT: 00 41 43 - BID FORM - UNIT PRICE (SINGLE-PRIME CONTRACT)
CONTRACT: ER -5100 EA URBAN FORESTRY DIVISION
2010 STREETSCAPE REPLACEMENT DEPARTMENT OF GENERAL SERVICES
CITY OF DURHAM, NORTH CAROLINA

LIMITED LIABILITY COMPANY

.....
(Bidder - print the full name of firm)

.....
(Authorized Firm Member)

(Seal)

was hereunto affixed in the presence of:

.....
(Witness)

(Seal)

Firm Address:

.....

.....

.....

.....
(State of Formation)

DOCUMENT: 00 41 43 - BID FORM - UNIT PRICE (SINGLE-PRIME CONTRACT)
CONTRACT: ER -5100 EA
2010 STREETSCAPE REPLACEMENT

URBAN FORESTRY DIVISION
DEPARTMENT OF GENERAL SERVICES
CITY OF DURHAM, NORTH CAROLINA

INDIVIDUAL OR SOLE PROPRIETORSHIP

.....
(Bidder - print the full name of individual or sole proprietorship)

(Seal)

Individual or Sole Proprietorship Address:

.....
.....
.....

CONTRACT: ER -5100 EA
2010 STREETSCAPE REPLACEMENT

URBAN FORESTRY DIVISION
DEPARTMENT OF GENERAL SERVICES
CITY OF DURHAM, NORTH CAROLINA

PARTNERSHIP

.....
(Bidder - print the full corporate name of partnership)

..... (Partner and Title) (Partner and Title)
(Seal)	(Seal)

..... (Partner and Title) (Partner and Title)
(Seal)	(Seal)

..... (Partner and Title) (Partner and Title)
(Seal)	(Seal)

..... (Partner and Title) (Partner and Title)
(Seal)	(Seal)

..... (Partner and Title) (Partner and Title)
(Seal)	(Seal)

(All Partners shall sign, additional signatures with titles and seals may be added below.)

was hereunto affixed in the presence of:

.....
(Witness)

(Seal)

Partnership Address:

.....
.....
.....

CONTRACT: ER -5100 EA
2010 STREETSCAPE REPLACEMENT

URBAN FORESTRY DIVISION
DEPARTMENT OF GENERAL SERVICES
CITY OF DURHAM, NORTH CAROLINA

JOINT VENTURE

If the Bid is a joint venture, add additional forms of execution for each member of the joint venture in the appropriate manner using the forms from above.

END OF SECTION

DOCUMENT 00 52 15

AGREEMENT FORM - SINGLE-PRIME CONTRACT

THIS AGREEMENT is by and between the City of Durham (Owner), a North Carolina municipal corporation, and (Contractor).

The City of Durham and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

1.1 WORK

- A. Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Site preparation, tree planting and follow-up maintenance at various locations throughout the City of Durham.

1.2 THE PROJECT

- A. The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Contract: ER 5100 EA, Project: 2010 Streetscape Replacement

- B. Listed below are the Sites
 - 1. ER 5100 EA DU: the 700, 800, 900, 1000 and 1200 blocks of North Duke Street.
 - 2. ER 5100 EA GR: the 600, 700, 800, 900, 1000, 1100, and 1200 blocks of North Gregson Street.

1.3 ARBORIST

- A. The Project has been designed by The City of Durham, Department of General Services, Urban Forestry Division (Arborist), who is to act as the City of Durham's representative, assume all duties and responsibilities, and have the rights and authority assigned to Arborist in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

1.4 CONTRACT TIMES

- A. Time of the Essence
 - 1. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

- B. Days to Achieve Substantial Completion and Final Payment
1. The Work shall be substantially completed within 90 days after the Notice to Proceed as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 365 days after the Notice to Proceed.
- C. Liquidated Damages
1. Contractor and the City of Durham recognize that time is of the essence of this Agreement and that the City of Durham will suffer financial loss if the Work is not completed within the times specified in Paragraph 1.4.B.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the City of Durham if the Work is not completed on time. Accordingly, instead of requiring any such proof, the City of Durham and the Contractor agree that as liquidated damages for the delay (but not as a penalty), Contractor shall pay the City of Durham four hundred dollars (\$400.00) for each day that expires after the time specified in Paragraph 1.4.B.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by the City of Durham, Contractor shall pay the City of Durham four hundred dollars (\$400.00) for each day that expires after the time specified in Paragraph 1.4.B.1 for completion and readiness for final payment until the Work is completed and ready for final payment.
 2. Failure of the Contractor to commence construction within ten (10) days of the Notice to Proceed shall begin a daily penalty to the Contractor at a rate of fifty percent (50%) of the daily liquidated damages specified in Paragraph 1.4.C.1.
- D. Weather Related Delays
1. The Contractor may request for an extension of Contract Times for delays related to adverse weather as described in the General Conditions, Paragraph 12.02A.

1.5 CONTRACT PRICE

- A. The City of Durham shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amount determined pursuant to Paragraphs 1.5.A.1 and 1.5.A.2 below:
1. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this Paragraph 1.5.A.2: As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by the Arborist as provided in Paragraph 9.07 of the General Conditions. Unit prices have been computed as provided in Paragraph 11.03 of the General Conditions.

CONTRACT: ER -5100 EA
2010 STREETSCAPE REPLACEMENT

URBAN FORESTRY DIVISION
DEPARTMENT OF GENERAL SERVICES
CITY OF DURHAM, NORTH CAROLINA

Cost Sheet

Item No.	Description	Estimated Quantities	Units	Price Per Unit	Cost
1	2-1/2" calipper single-stem B&B Cercis Chinensis 'Avondale', installed	27	Ea		
2	2-1/2" calipper single-stem B&B Cercis reniformis var. texensis 'Oklahoma', installed	38	Ea		
3	3" calipper single-stem B&B Lagerstroemia indica x fauriei 'Natchez', installed	10	Ea		
4	3" calipper single-stem B&B Pistacia chinensis, installed	32	Ea		
5	Stumps to be ground to minimum 6' diameter and 24" depth.	27	Ea		
6	Soil samples to be retrieved, submitted, analyzed and used as basis for amendment prescription	214	Ea		
7	Soil amendments: Pine bark, fertilizer, expanded slate aggregate, loam topsoil and lime or sulfur, installed, per site	107	Ea		
8	Site preparation tilling, 6' diameter by 2' depth	107	Ea		
9	Work Zone Safety Equipment rental, delivery, set-up, Duke St.	5	days		
10	Work Zone Safety Equipment rental, delivery, set-up, Gregson St.	5	days		
11	Pre-Emergent Herbicide treatment, applied	107	Ea		
12	Mulch: Triple-shred hardwood, spread	36	Cubic Yards		
13	Watering "bags" (tree Gator, Ooze tube, or equivalent), installed	107	Ea		
14	Tree Watering, April through October 2010	28	weeks		

TOTAL COST BID FOR ER 5100 EA \$ _____

1.6 PAYMENT PROCEDURES

- A. Submittal and Processing of Payments
 - 1. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.
- B. Progress Payments; Retainage
 - 1. The City of Durham shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the last day of each month during performance of the Work as provided in Paragraphs 1.6.B.1.a and 1.6.B.1.b below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:
 - a. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amount as Arborist may determine or the City of Durham may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions:
 - b. The City of Durham will retain two and one-half (2.5%) percent of the amount of each estimate until Work covered by the Contract is one hundred (100) percent complete.
 - c. Notwithstanding any of the retainage provisions described herein, there shall be no retainage on periodic or final payments for Contracts having a total project cost less than \$100,000.00, and, in addition to the retainage amounts allowed to be held by the City of Durham, the City shall also retain all rights allowed under this Agreement to withhold payment to the Contractor in accordance with Article 14 of the General Conditions and for unsatisfactory job progress, defective or nonconforming construction not remedied, disputed Work, or third-party claims filed against the City of Durham or reasonable evidence that a third-party claim will be filed.
 - d. Within 60 days of receipt by the City of (1) a pay request and (2) written consent of the surety, and after the City has either (1) received a certificate of substantial completion, or (2) received beneficial occupancy or use of the project (if applicable), the City of Durham shall pay an amount sufficient to increase total payment to Contractor to the Contract Price, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less up to two hundred and fifty percent (250%) of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

C. Final Payment

1. Prior to issuing final payment, the Contractor will furnish to the City of Durham certification that: All Subcontractors and vendors associated with this Contract have been paid; no liens and/or lawsuits have been placed against the Contractor for this Work; and the total dollar amount has been paid to all Subcontractors, Suppliers, and others associated with this project.
2. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, the City of Durham shall pay the remainder of the Contract price as recommended by Arborist as provided in said Paragraph 14.07.

1.7 CONTRACTOR'S REPRESENTATIONS

- A. In order to induce the City of Durham to enter into this Agreement Contractor makes the following representations:
1. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
 2. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 3. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and regulations that may affect cost, progress, and performance of the Work.
 4. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional and supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by the Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.
 5. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
 6. Contractor is aware of the general nature of work to be performed by the City of Durham and others at the Site that relates to the Work as indicated in the Contract Documents.
 7. Contractor has correlated the information known to the Contractor, information and observations obtained from visits to the Site, maps identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

8. Contractor has given Arborist written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
9. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

1.8 MISCELLANEOUS

A. Terms

1. Terms used in this Agreement will have the meanings stated in the General Conditions.

B. Assignment of Contract

1. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

C. Successors and Assigns

1. The City of Durham and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

D. Severability

1. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the City of Durham and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

E. Notices and Communications

1. All notices and other communications required or permitted by Contract shall be in writing and shall be given by personal delivery, fax, or certified United States mail (return receipt requested) addressed/faxed as follows:

CONTRACT: ER -5100 EA
2010 STREETSCAPE REPLACEMENT

URBAN FORESTRY DIVISION
DEPARTMENT OF GENERAL SERVICES
CITY OF DURHAM, NORTH CAROLINA

To the City of Durham (Owner):
Attention: Alex Johnson, RF, CE
City of Durham
Department of General Services
Urban Forestry Division
12011 Fay St.
Durham, North Carolina 27704
Fax: (919) 560-4196

To the Contractor:
Attention:
Firm Name
Street Address
City, State Zip Code
Fax Number

2. A change of address, fax number, or person to receive notices or communications may be made by either party by notice given to the other party. Any notices or communications under Contract shall be deemed given at the time of actual delivery, if it is personally delivered or faxed. If the notices or communications are sent by United States mail, it shall be deemed given upon the third calendar day following the day on which the notices or communications were postmarked, or upon actual delivery, whichever first occurs.

F. Other Provisions

1. Leaning Trees
 - a. The Contractor shall be responsible for straightening all leaning trees. Any trees that tilt out of plumb due to wind, settling, vandalism or vehicle strike prior to acceptance must be corrected within ten (10) days time from the date notice is given by the City of Durham.

G. Technical Data and Other Work

1. Subsurface and Physical Conditions
 - a. No reports of explorations or tests of subsurface conditions at or contiguous to the Site are known to the City of Durham or Arborist.
2. Hazardous Environmental Condition
 - a. No reports or drawings related to Hazardous Environmental Condition are known to the City of Durham or Arborist.
3. Other Work
 - a. The City of Durham and Arborist are unaware of any other work on the Site at the time of Notice to Proceed

H. Contractor's Liability Insurance

1. Workers compensation insurance shall cover employers' liability, \$1,000,000.

CONTRACT: ER -5100 EA
2010 STREETSCAPE REPLACEMENT

URBAN FORESTRY DIVISION
DEPARTMENT OF GENERAL SERVICES
CITY OF DURHAM, NORTH CAROLINA

2. Automobile liability insurance shall have a combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$2,000,000 per year.
3. The policies of insurance required by Paragraph 5.04 of the General Conditions shall have a combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$2,000,000 per year.
3. Professional liability insurance coverage self-insured retentions/deductibles in excess of \$10,000 must be approved by the City Finance Director.
5. Professional liability insurance coverage shall have a combined single limit not less than \$2,000,000 per claim applicable to this Contract.

CONTRACT: ER -5100 EA
2010 STREETSCAPE REPLACEMENT

URBAN FORESTRY DIVISION
DEPARTMENT OF GENERAL SERVICES
CITY OF DURHAM, NORTH CAROLINA

CERTIFICATE OF FINANCE OFFICER

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

This day of,

.....
FINANCE OFFICE, CITY OF DURHAM

NON-COLLUSION STATEMENT BY CONTRACTOR

The City of Durham prohibits collusion, which is defined as a secret agreement for a deceitful or fraudulent purpose.

I,, affirm that I have not engaged in collusion with any City employee(s), other person, corporations, or firms relating to this Bid, proposals, or quotations. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.

.....
CONTRACTOR

CONTRACT: ER -5100 EA
2010 STREETSCAPE REPLACEMENT

URBAN FORESTRY DIVISION
DEPARTMENT OF GENERAL SERVICES
CITY OF DURHAM, NORTH CAROLINA

IN TESTIMONY WHEREOF, the City of Durham has caused these presents to be signed in its name by the City Manager or the Deputy City Manager and its corporate seal to be hereto affixed and attested by the City Clerk, all by order of the City Council and the City of Durham; and the Contractor's officers, having been duly authorized by resolution of its Board of Directors, hereby execute this Contract under the seal of and on behalf of Contractor.

IN WITNESS WHEREOF, the City of Durham and Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to the City of Durham and the Contractor. All portions of the Contract Documents have been signed or identified by the City of Durham and Contractor or on their behalf.

This Agreement will be effect on (date, year) (which is the Effective Date of the Agreement).

OWNER: CONTRACTOR (CORPORATION):

CITY OF DURHAM

By..... By.....

CITY MANAGER or
DEPUTY CITY MANAGER Title.....

(CORPORATE SEAL) (CORPORATE SEAL)

Attest..... Attest.....

CITY CLERK Title.....

(CORPORATE SEAL) (CORPORATE SEAL)

Address for giving notices: Address for giving notices:

Attention: Alex Johnson
City of Durham - Department of General Services
Urban Forestry Division
2011 Fay St.
Durham, North Carolina 27704

Phone No.: (919) 560-4197 ext. 21275
Fax No.: (919) 560-4196
Phone No.:
Fax No.:
License No.:

Agent for service or process:
.....
(If Contractor is a corporation or partnership,
attach evidence of authority to sign.)

URBAN FORESTRY DIVISION
DEPARTMENT OF GENERAL SERVICES
CITY OF DURHAM, NORTH CAROLINA

ACKNOWLEDGMENT BY CITY OF DURHAM

I, a Notary Public in and for the aforesaid County and State certify that
personally appeared before me this day, and acknowledged that he or she is the City
Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of
the City, the foregoing contract or agreement was signed in its corporate name by its
City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk.
This the day of, 20.....

.....

CONTRACT: ER -5100 EA
2010 STREETSCAPE REPLACEMENT

URBAN FORESTRY DIVISION
DEPARTMENT OF GENERAL SERVICES
CITY OF DURHAM, NORTH CAROLINA

DOCUMENT 00 72 15

GENERAL CONDITIONS - SINGLE-PRIME CONTRACT

1.1 SUMMARY

- A. Document Includes:
 - 1. General Conditions.
- B. Related Documents:
 - 1. Document 00 52 15 - Agreement Form -Single-Prime Contract.

1.2 GENERAL CONDITIONS

- A. General Conditions of the Contract.

END OF DOCUMENT

**STANDARD
GENERAL CONDITIONS
OF THE
CONSTRUCTION CONTRACT**

Prepared by
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

Copyright ©2002
National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314
American Council of Engineering Companies
1015 15th Street, N.W., Washington, DC 20005
American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
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City of Durham, Department of General Services
2011 Fay St., Durham, NC 27704

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ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*--The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

3. *Application for Payment*--The form acceptable to Arborist which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Arborist*--The individual or entity named as such in the Agreement.

5. *Bid*--The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidder*--The individual or entity who submits a Bid directly to Owner.

7. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda).

7. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, bid security of acceptable form, if any, and the Bid Form with any supplements.

8. *Change Order*--A document recommended by Arborist which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

9A. *City*--The City of Durham, North Carolina.

9B. *City Council*--The City Council of the City of Durham, North Carolina.

9C. *City Manager*--The City Manager of the City of Durham, North Carolina.

10. *Claim*--A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*-- Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Maps and other Contractor's submittals are not Contract Documents.

13. *Contract Price*--The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

15. *Contractor*--The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*--See Paragraph 11.01.A for definition.
- 17A. *Document*--A specific section of the Project Manual or a reference to a specific section of the Project Manual as noted with the accompanying numeric reference.
18. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Field Order*--A written order issued by Arborist which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
20. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.
- 21A. *Issuing Office*--The office from which the Bidding Documents are to be issued and where the Bidding procedures are to be administered.
22. *Laws and Regulations; Laws or Regulations*- -Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
24. *Maps*--That part of the Contract Documents prepared or approved by Arborist which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined
25. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
26. *Notice of Award*--The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
27. *Notice to Proceed*--A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
28. *Owner*--The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed. The Owner is the City of Durham, North Carolina. The City Manager is hereby designated as Owner's representative. The City Manager is the only individual authorized to act on Owner's behalf under or in connection with the Contract Documents, unless the City Manager designates a new representative in writing. The authority of the City Manager and designated representative(s), if any, includes terminating or suspending Work under Article 15 and executing changes in the Work under Article 10.
29. *Products*--Means, materials, and equipment that Contractor furnishes and provides, other than labor and services.
30. *Progress Schedule*--A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
31. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
32. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

33. *Property Owner*--The individual, partnership, co-partnership, limited liability corporation, firm, company, corporation, unincorporated association, organization, joint stock company, trust, estate, institution, governmental entity, or any other entity that owns the property, or controls management or activities of the private property adjacent to where Work is performed.
34. *Pruning* – The selective removal of branches from a tree using an approved tool as directed by the Arborist or his representative, subject to ANSI A – 300 standards.
35. *Related Entity* -- An officer, director, partner, employee, agent, consultant, or subcontractor.
35. *Resident Project Representative*--The authorized representative of Engineer who may be assigned to the Site or any part thereof to make any and all inspections of the Work performed, acting under direct supervision of the Engineer.
36. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
37. *Schedule of Submittals*--A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
38. *Schedule of Values*--A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
39. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
40. *Site*--Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
41. *Soil Samples*--Physical examples of the substrate taken from specific planting sites in a manner consistent with the contract specifications to be submitted to the appropriate state agency for the expressed purpose of analysis to formulate specific amendment prescriptions for planting sites.
42. *Specifications*--That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Stump*- The portion of the tree made up of the lower buttress flair and surface roots typically left on site when a tree removal has taken place.
44. *Stump grinding*- The physical removal of a stump through mechanical means, typically using a piece of specialized equipment designed for the purpose, to a depth and extent described in the contract document.
45. *Stump shavings*- The physical remains of a stump which has been ground through mechanical means, typically consisting of irregularly sized chips mixed with soil..
46. *Subcontractor*--An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
47. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer and approved by Owner, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be lawfully utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

48. *Successful Bidder*--The Bidder submitting a responsive Bid to whom Owner makes an award.

49. *Superintendent*--The authorized representative of the Contractor who is assigned to oversee the work forces responsible for performing the Work in accordance with the Contract Documents.

50. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

51. *Supplier*--A manufacturer, fabricator, supplier, distributor or vendor having a direct contract or relationship with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.

52. *Tree* – A long-lived woody perennial plant that can achieve an upright form.

52. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

50. *Unit Price Work*--Work to be paid for on the basis of unit prices.

51. *Work*--The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

52. *Work Change Directive*--A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

A. The following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following meaning.

B. *Intent of Certain Terms or Adjectives*

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Arborist. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Arborist as to the Work. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day*

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory,

- faulty, or deficient in that it:
 - a. does not conform to the Contract Documents, or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents, or
 - c. has been damaged prior to Arborist's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).
- E. *Furnish, Install, Perform, Provide*
 - 1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 - 2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use and is synonymous with "plant".
 - 3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 - 4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.
- F. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.
- G. *Include*
 - 1. The word "include" in its various forms and derivatives shall mean 'without limitation' unless the context otherwise requires.
- H. *Persistently Fails*
 - 1. The expression 'persistently fails' and other similar expressions, as used in reference to the Contractor, shall mean any act or omission which causes Owner or Arborist to reasonably conclude that Contractor will not complete the Work within the Contract Times or Contract Price, or in substantial compliance with the requirements of the Contract Documents.
- I. *Pronouns, Numbers, and Titles*
 - 1. Unless the context otherwise requires, all personal pronouns used in the Contract Documents shall include all other genders, and the singular shall include the plural and vice versa. Titles and headings of articles, paragraphs, subparagraphs, sections, subsections, parts, subparts, etc., in the Contract Documents are for convenience only, and neither limit nor amplify the provisions.

ARTICLE 2 - PRELIMINARY MATTERS

- 2.01 *Delivery of Bonds and Evidence of Insurance*
 - A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
 - B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in Article 5, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.
- 2.02 *Copies of Documents*
 - A. The City of Durham shall furnish to Contractor one (1) printed or hard copy of the maps and Project Manual and one (1) set in electronic format. Additional copies will be furnished upon request. The cost of reproduction will be charged to the requestor.
- 2.03 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth (30th) day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty (30) days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the thirtieth (30th) day after the execution of the Contract by the City of Durham, Office of the City Manager.
- 2.04 *Starting the Work*
- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.
- 2.05 *Before Starting Construction*
- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:
 1. a preliminary Progress Schedule; indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
 2. a preliminary Schedule of Submittals; and
 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.
 - B. *Priority List of Sites:* The priority list of Sites for the Project shall be approved by the Arborist. The City of Durham reserves the right to alter the priority list of Sites. The Contractor shall be given notice in writing of any change in the priority list of Sites.
- 2.06 *Preconstruction Conference*
- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- 2.07 *Initial Acceptance of Schedules*
- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Arborist as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Arborist.
 1. The Progress Schedule will be acceptable to Arborist if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Arborist responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

- 3.01 *Intent*
- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
 - B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation,

services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to Owner.

C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

D. The General Requirements govern the execution of the Work of all sections of the Technical Specifications of the Contract Documents.

3.02 *Reference Standards*

A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, or Engineer, or any of, their Related Entities, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. Reporting Discrepancies

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Arborist any conflict, error, ambiguity, or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Arborist before proceeding with any Work affected thereby.
 - a. Contractor acknowledges:
 - 1) the Contract Documents are sufficient to determine the cost of the Work;
 - 2) it has had sufficient opportunity to visit the Site and to examine all conditions, including subsurface and physical conditions, affecting the Work;
 - 3) it has had a sufficient opportunity to examine the Contract Documents for errors, inconsistencies, and omissions;
 - 4) the Contract Documents are complete and unambiguous;
 - 5) the Contract Times are reasonable and sufficient to complete the Work.
 - b. If the statements in Paragraph 3.03.A.1.a are not accurate, Contractor accepts any risk in connection with making them.
 - c. Contractor shall evaluate and satisfy itself as to the conditions and limitations under which the Work is to be performed, including (to the extent they are pertinent):
 - 1) the location, condition, layout, and nature of the Site and surrounding areas,
 - 2) generally prevailing climatic condition,
 - 3) anticipated labor supply and costs,
 - 4) availability and cost of materials, tools, and equipment, and
 - 5) other similar issues.

- d. To the extent that it may be appropriate for the proper execution of its subcontract, Contractor shall cause each Subcontractor to do the evaluation described in Paragraph 3.03.A.1.c.
 - e. Owner shall not be required to make any adjustment in with the Contract Times or the Contract Price in connection with any failure by Contractor to comply with Paragraph 3.03.A.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall promptly report it to Arborist in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04. 3. Contractor shall not be liable to Owner or Arborist for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor knew or reasonably should have known thereof or unless otherwise provided in the Contract Documents, or by Laws or Regulations or common law.

B. Resolving Discrepancies

- 1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
- 2. Owner and Contractor shall do all acts, and shall make, execute, and deliver such written instruments, as shall from time to time be reasonably required to carry out the provisions of the Contract Documents. If inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, specifications, manuals, or Laws or Regulations cannot be resolved by use of provisions of the Contract Documents as described in Paragraph 3.03.B.1, Contractor shall:
 - a. provide the better quality or greater quantity of Work or
 - b. comply with the more stringent requirement.
- 3. Paragraph 3.03.B.2 shall not relieve the Contractor of any obligations otherwise imposed on it.

3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
 - 1. A Field Order;
 - 2. Arborist's approval of a Shop Drawing or Sample; (Subject to the provisions of Paragraph 6.17.D.3); or
 - 3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

- A. Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing all of the Work under a direct or indirect contract with Contractor, shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Arborist or Arborist's consultants, including electronic media editions; or
 - 2. reuse any of such Maps, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaption by Engineer.
- B. The prohibition of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

- A. Copies of data furnished by Owner or Arborist to Contractor or Contractor to Owner or Arborist that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60- day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefore as provided in Paragraph 10.05.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.
- G. *Public Notice and Advisory:* The Contractor shall notify individuals or entities anticipated to be affected by the Work. Notice shall be written and provided to the recipient no less than two (2) days prior to commencing Site construction. Notice shall be delivered in person, door knob hanger, or letter and shall include the following information:
 - 1. nature and schedule of the Work;
 - 2. name and telephone number of a contact person; and
 - 3. any additional necessary information or instructions.
- H. The Arborist or Resident Project Representative shall approve any notice prior to commencement of construction.

4.02 *Differing Subsurface or Soil Conditions*

- A. *Notice:* If Contractor discovers through excavation or soil test that any subsurface or soil condition at a Site that is uncovered or revealed either:
1. is of such a nature as to require a change in the Contract Documents (example, vault or stone necessitates a change in tree site location); or
 2. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents (is contaminated and not suitable for planting, for example);
- then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.
- B. *Arborist's Review:* After receipt of written notice as required by Paragraph 4.03.A, Arborist will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Arborist's findings and conclusions.
- C. *Possible Price and Times Adjustments*
1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
 - b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
 2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
 3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, Owner and Engineer, and any of their Related Entities shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.03 *Underground Facilities*

- A. *Located Underground Facilities :*The cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
1. Locating all Underground Facilities within planting sites using utility location services.

2. Conducting excavations in proximity to located underground facilities in such a way as to minimize potential for damage including but not limited to,
 - a. Hand digging
 - b. Using compressed air excavation tools
 - c. modifying planting site locations to remain within Right-of-Way at the discretion of the Arborist.
 - d. Modifying rootball to fit within excavation limited in size by underground facility at the discretion of the Arborist.
 3. The safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.
- B. *Unanticipated Underground Facilities :*
1. If an Underground Facility is uncovered or revealed at a planting Site which was not located with reasonable accuracy by the utility location service, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Arborist. Arborist will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
 2. If Arborist concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not indicated with reasonable accuracy by the utility locator service and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.04 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for tree planting which in Arborist's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Arborist whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.05 *Hazardous Environmental Condition at Site*

- A. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in maps or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- B. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Arborist (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Arborist concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.

- C. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- D. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- E. Nothing in this Paragraph 4.05 is intended to reduce Owner's duties under the Contract Documents, including Article 8.
- F. Nothing in this Paragraph 4.05 is intended to reduce Contractor's duties under the Contract Documents, including Article 6.
- G. The provisions of Paragraphs 4.02, and 4.03 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

4.06 *Private Encroachment at Site*

- A. Contractor shall not be responsible for any damage to private encroachments onto the public Right-of-Way in which the planting sites are located. In the event an encroachment is uncovered or revealed at the Site that interferes with a planting site location, the Contractor shall notify the Arborist of the presence of the encroachment and give the adjacent property owner a minimum of 24 hrs notice to remove the encroachment at their own expense. If the adjacent property owner refuses to remove the encroachment in a timely manner, the Arborist will direct City resources to clear the planting site of any obstructions or modify the planting site in writing to accommodate the obstruction at his discretion.

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act. Furnish Performance and Payment Bonds on the bond forms included in Appendix G. Performance and Payment Bonds shall be executed by a surety licensed to do business in the State of North Carolina.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer

and shall, within five (5) days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in Article 5.

5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured identified in Article 5, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Certificates of insurance shall be addressed to the City of Durham, North Carolina, Attention: Finance Director, 101 City Hall Plaza, Durham, North Carolina 27701.
- C. Both the certificates of insurance and additional insured endorsement must be originals and must be approved by the City of Durham's Finance Director before Contract can begin any Work under this Contract.
- D. Failure of the City of Durham to demand such certificates or other evidence of full compliance with these insurance requirements or failure of the City of Durham to identify a deficiency from evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- E. By requiring such insurance and insurance limits herein, the City of Durham does not represent that coverage and limits will necessarily be adequate to protect Contractor, and such coverage and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to the City of Durham in the Contract Documents.

5.04 *Contractor's Liability Insurance*

- A. Contractor shall purchase and maintain commercial general liability insurance as is appropriate for the Work being performed and will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - a. Workers compensation insurance shall cover statutory benefits.
 - b. Workers compensation insurance shall cover employees; cover Contractor's partners, officers, and relatives (who work on this Contract).
 - c. Workers compensation insurance shall cover employers' liability in the amount stipulated by the Agreement, Paragraph 1.10.H.1.
 - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 - 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 - 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
 - 5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 - 6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle or piece of equipment.

- a. Automobile liability insurance shall cover owned, hired, or borrowed vehicles.
 - b. Automobile liability insurance shall cover employee vehicles, if used in performance of this Contract.
 - c. Automobile liability insurance limits shall be as stipulated in the Agreement, Paragraph 1.10.H.2.
 - 7. claims for damages related to premises/operations.
 - 8. claims for damages related to products/completed operations.
 - 9. claims for damages related to broad form property damage.
 - 10. claims for damages related to explosion, collapse, and underground hazards if the hazards exist in the performance of this Contract.
 - 11. claims for damages related to contractual liability.
 - 12. claims for damages related to independent contractors, if any are used in the performance of this Contract.
- B. The policies of insurance required by this Paragraph 5.04 shall:
- 1. with respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.12 inclusive, include as additional insured (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in Article 5, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
 - a. City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the General Liability section of the certificate, in lieu of an original endorsement).
 - 2. include at least the specific coverages and be written for not less than the limits of liability provided in Article 5 or required by Laws or Regulations, whichever is greater;
 - 3. include completed operations insurance;
 - 4. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
 - 5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in Article 5 to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
 - 6. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
 - 7. with respect to completed operations insurance, and any insurance coverage written on a claims made basis, remain in effect for at least two years after final payment.
 - a. Contractor shall furnish Owner and each other additional insured identified in Article 5, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.
 - 8. have a combined single limit and aggregate limit as stipulated in the Agreement, Paragraph 1.10.H.3.
 - 9. be provided by companies authorized to do business in the State of North Carolina.
 - 10. be provided by companies with Best rating A-VII. Anything less requires written approval from the Owner.
- C. In the event that claims in excess of the insured amounts provided herein are filed by reason of

any operations under the Contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the Contractor until such time as the Contractor shall furnish such additional security covering such claims as may be determined by the Owner.

- D. All policies and certificates of insurance of the Contractor shall contain the following clauses:
 - 1. Insurers shall have no right of recovery or subrogation against the Owner and its agents and agencies and the Engineer, it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above described insurance.
 - 2. The clause "other insurance provisions" in a policy in which the Owner and its agents and agencies and the Engineer is named as an insured, shall not apply to these parties.
 - 3. The insurance companies issuing the policy or policies shall have no recourse against the Owner and its agents and agencies and the Engineer, for the payment of any premiums or for assessments under any form of policy.
 - 4. Any and all deductibles in the above described insurance policies shall be assumed by and be for the amount of, and at the sole risk of the Contractor.
- E. Contractor shall purchase and maintain professional liability covering architects and engineers employed or engaged by Contractor covering claim arising out of work in connection with this Contract.
 - 1. Self-insured retentions/deductibles shall be as stipulated in the Agreement, Paragraph 1.10.H.4.
 - 2. Combined single limit of insurance shall be as stipulated in the Agreement, Paragraph 1.10.H.5.
 - 3. This insurance shall be maintained for six (6) years following the date of completion of the Work under this Contract.
- F. Contractor shall cause each Subcontractor employed by the Contractor to purchase and maintain insurance of such types specified above. Valid certificates of insurance consistent with requirements of Article 5 shall be obtained by the Contractor and forwarded to the City prior to Contractor's use of Subcontractors in the performance of any aspect of this Contract.

5.05 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B, but failure to give such notice does not waive any rights. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means,

methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Arborist except under extraordinary circumstances. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received from the superintendent shall be binding on Contractor.
- C. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, Owner and Contractor shall communicate through Engineer. Communications by and with Engineer's consultants shall be through Engineer.

6.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Arborist.

6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. Engineer may reject any material and equipment delivered to the Site without the approval of satisfactory evidence required by the Contract Documents.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-

equal” item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Arborist for review under the circumstances described below.

1. *“Or-Equal” Items:* If in Arborist’s sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an “or-equal” item, in which case review and approval of the proposed item may, in Engineer’s sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment Engineer determines that:

- 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
- 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole,
- 3) it has a proven record of performance and availability of responsive service; and

b. Contractor certifies that, if approved and incorporated into the Work:

- 1) there will be no increase in cost to the Owner or increase in Contract Times, and
- 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. **Substitute Items**

a. If in Engineer’s sole discretion an item of material or equipment proposed by Contractor does not qualify as an “or-equal” item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. Contractor shall submit sufficient information as provided below to allow Engineer to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented in the General Requirements and as Engineer may decide is appropriate under the circumstances.

d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use.

The application:

1) shall certify that the proposed substitute item will:

- a) perform adequately the functions and achieve the results called for by the general design,
- b) be similar in substance to that specified, and
- c) be suited to the same use as that specified;

2) will state:

- a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor’s achievement of Substantial Completion on time;
- b) whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
- c) whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to

- payment of any license fee or royalty;
- 3) will identify:
 - a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services;
- 4) and shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change,

- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of planting is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Arborist, in Arborist's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Arborist will be similar to those provided in Paragraph 6.05.A.2. The procedure for payment of expenses shall be similar to that provided in Paragraph 6.05.A.1.b.1.
- C. *Arborist's Evaluation:* Arborist will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Arborist may require Contractor to furnish additional data about the proposed substitute item. Arborist will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Arborist's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." Arborist will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Arborist's Cost Reimbursement:* Arborist will record Arborist's costs in evaluating and implementing a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Arborist for evaluating and implementing each such proposed substitute. Contractor shall also reimburse Owner for the charges of Arborist for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.
- G. Any materials and equipment required to be approved by the Engineer that is installed on the Project without such approval is subject to removal, disposal, and replacement by the Contractor at Contractor's expense.

6.06 Concerning Subcontractors, Suppliers, and Others

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection. However, if the Contract Documents specify any item, process, or the like that is available only from a Subcontractor or Supplier against whom Contractor has an objection, the preceding sentence does not apply as to that particular Subcontractor or Supplier.

- B. If Article 6 requires the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with Article 6, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity, nor
 2. shall anything in the Contract Documents create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Arborist through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to a appropriate written agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Arborist. Where appropriate, Contractor shall require each Subcontractor or Supplier to enter into similar agreements with persons and firms that Subcontractor or Supplier has contracted with for any part of the Work.
- H. *Furnishing Subcontractor Documents:* At any time after the Agreement is executed, whether or not notice of termination has been given, Contractor shall upon request of the Owner promptly give the Owner a copy of the entire text of all agreements, (including attachments and exhibits) with Subcontractors, together with all other documents by which any services, materials, equipment, or other goods were ordered by the Contractor, including documents showing the cost, delivery dates, and all terms and conditions (including those relating to ordering and canceling).
- I. *Partial Requirements of Subcontracts:* All subcontracts shall include substantially the following Paragraphs 6.06.I.1 and 6.06.I.2. Upon Owner's request, Contractor shall demonstrate compliance with this Paragraph.
1. Paragraph 6.06.G of the General Conditions of the Construction Contract between Owner (City of Durham) and Contractor is incorporated by reference into this subcontract. To the extent of the

Work to be performed by the Subcontractor, the rights of Owner and Arborist under the Owner-Contractor Agreement with respect to the Work to be performed by the Subcontractor are preserved and shall be protected so that subcontracting shall not prejudice those rights. Owner (City of Durham) is an intended third party beneficiary of this subcontract.

2. If Contractor is terminated by Owner, and even if Contractor defaults in such a way which would give the Subcontractor the right to terminate this subcontract, the Subcontractor hereby agrees that, upon written request (by Owner, or a contractor substituted in place of the original Contractor, or any surety obligated under bond relating to the Owner-Contractor Agreement), the Subcontractor will continue to perform its obligations under this subcontract (on the same terms and conditions as apply to this subcontract) for and on account of Owner, such substitute contractor, or the surety. If requested by Owner or surety, the Subcontractor shall execute a separate document to show its commitment to continue performance pursuant to this subcontract. Assignment is subject to the prior rights of the surety. Owner shall be responsible to the subcontractor only for those obligations of Contractor that accrue after Owner exercises any rights under this Paragraph.

- J. The Contractor shall comply with all applicable provisions of Sections 18-50 through 18-54 of the City of Durham Code (Ordinance to Promote Equal Business Opportunities in City Contracting), as amended from time to time. Failure of Contractor to comply with these provisions shall be a material breach of Contract which may result in the rescission or termination of Contract and/or appropriate remedies in accordance with the provisions of the ordinance, Contract, and State law. Section 18-58.f of the ordinance provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have fourteen (14) days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies. If the deficiencies are not cured, the City shall have the right to take all lawful actions." These provisions apply only to alleged Contractor violations of Sections 18-50 through 18-54 of the City Code.
- K. The Contractor shall meet all City of Durham requirements for affirmative action and Small Disadvantaged Business Enterprises (SDBE) participation. These requirements are detailed in Appendix A, SDBE Requirements and Construction Forms.
 - 1. The Contractor shall submit form E-105 "Statement of Intent to Perform as Subcontractor" within five (5) days of the Bid opening for each Subcontractor intended to be counted towards the SDBE goals of the Contract.
 - 2. All questions regarding SDBE documents or requirements may be directed to the City of Durham, Department of Equal Opportunity/Equity Assurance at (919) 560-4180.
- L. A Privilege License for all Subcontractors shall be filed within five (5) days after the Bid opening. The Contractor and all Subcontractors shall obtain a City of Durham Privilege License from the Department of Finance, Treasury Management Division, located at 101 City Hall Plaza, Durham, North Carolina, (919) 560- 4700.
- M. The City of Durham or Engineer may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by a particular Subcontractor or Supplier.

6.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights, trade secrets, proprietary information, or copyrights held by others, whether or not a particular invention, design, process, Product, or device is specified in the Contract Documents for use in the performance of the Work, and whether or not Arborist, or Owner, or the consultants, contractors, agents, and employees of either of them are aware of such patent rights, trade secrets, proprietary information, and copyrights.

6.08 *Permits*

- A. Unless otherwise provided in Article 6, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.
- B. The Contractor will be reimbursed for all North Carolina Sales and Use Tax paid during any preceding month, at the time the monthly estimate is paid, provided they submit a sworn notarized statement itemizing the tax, showing each amount and to whom paid, and certifying that the articles purchased were used in Work performed for the City of Durham. State tax and County tax must be separated. Group amounts by County and provide a subtotal for each County. Amounts for items purchased outside of Durham County and delivered on-Site shall be grouped by County. One copy of all receipts/invoices must be provided for these amounts.
- C. Reimbursable sales taxes as described below are to be excluded from unit prices.
1. Sales taxes are reimbursable if they were originally paid on purchases of building materials, fixtures, and equipment that become part of or annexed to any building or structure that is owned or leased by the City of Durham and is being erected, altered, or repaired for use by the City of Durham. Infrastructure (streets, sidewalks, sewer pipes, and water lines, etc.) is generally held to be "structure" so as to allow reimbursement for sales taxes paid on materials and fixtures that become a part of or are annexed to it. Examples of sales taxes that cannot be reimbursed include those paid for purchases such as scaffolding, tools, equipment repair parts, equipment rentals, forms for concrete, or fuel to operate machinery or equipment.
- E. The Contractor may seek reimbursement at the same time as, or subsequent to, the Application for Payment is made for the properties that were taxed. The Contractor shall not file for reimbursement for sales taxes before the Contractor has the right to file an Application for Payment for properties that were taxed.
- F. Sales taxes paid by Subcontractors should be detailed on the form "Reimbursable Sales and Use Tax Statement by Subcontractor" (see Appendix H). The Subcontractor completes and signs the form and provides the form to the Contractor. The Contractor submits all sales tax forms with the Contractor's pay application for the properties listed on that form. The City of Durham will make the reimbursement payable to the Contractor. Except for the differences listed above, the answers to all questions on this page still apply whether the Subcontractor or the Contractor completes and signs the form.

- G. Contractor shall include all requests for reimbursement of North Carolina Sales and Use with Applications for Payment. No Sales or Use taxes shall be reimbursed to the Contractor after Owner issues final payment.

6.11 *Use of Site and Other Areas*

- A. Limitation on Use of Site and Other Areas
 1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
 2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
 3. As used in this Paragraph 6.11, 'occupant' includes any person, firm, or corporation, whether present as a licensee, invitee, lessee, or sublessee of any tier or level.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger the Work or adjacent property.
- E. Where the Site is located on private property, Contractor shall take special care to restore the Site after construction is completed. All costs for this private property restoration shall be included in itemized unit prices. Restoration may include, but is not limited to, returning the Site to its original condition. Additional effort may be required to restore the Site. The Engineer or Resident Project Representative shall determine whether a Site has been adequately restored.

6.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 1. all persons on the Site or who may be affected by the Work;
 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, passing vehicles, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
 - C. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or , or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
 - D. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
 - E. *Existing Utilities*
 - 1. Contractor shall contact the North Carolina One Call Center to coordinate existing utility location prior to commencement of any Work.
 - a. North Carolina One Call Center, (800) 632- 4949, www.ncocc.org.
- 6.14 *Safety Representative*
- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.
- 6.15 *Hazard Communication Programs*
- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.
- 6.16 *Emergencies*
- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Arborist prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued. Contractor shall promptly report in writing to Owner and Engineer all accidents or incidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injury, or serious property damage is caused, Contractor shall report the accident or incident immediately by telephone or messenger to Owner and Arborist. Contractor shall give Owner and Engineer reasonable advance notice before using or placing explosives or other hazardous materials or equipment on the Site.
- 6.17 *Digital Photographs and Samples*
- A. Contractor shall submit digital photographs and Samples to Arborist for review and approval in accordance with the acceptable Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Arborist may require.
 - 1. *Digital Photographs*
 - a. Submit number of copies specified in the General Requirements.

- b. Data shown in the Digital Photographs will be complete with respect to quantities, dimensions, species, form, condition, similar data to show Arborist the Landscape materials, and equipment Contractor proposes to provide and to enable Arborist to review the information for the limited purposes required by Paragraph 6.17.D.
 - 2. *Samples*: Contractor shall also submit Samples to Arborist for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals.
 - a. Submit number of Samples specified in the Specifications.
 - b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Arborist may require to enable Arborist to review the submittal for the limited purposes required by Paragraph 6.17.D.
 - B. Where a Digital Photograph or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
 - C. Submittal Procedures
 - 1. Before submitting each Digital Photograph or Sample, Contractor shall have determined and verified:
 - a. all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - b. the suitability of all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;
 - c. all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto; and
 - d. shall also have reviewed and coordinated each Shop Drawing or Sample with other Digital Photographs and Samples and with the requirements of the Work and the Contract Documents.
 - 2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
 - 3. With each submittal, Contractor shall give Arborist specific written notice of any variations, that the Digital Photo or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Digital Photograph's or Sample Submittal; and, in addition, by a prominent specific notation made on each Shop Drawing or Sample submitted to Arborist for review and approval of each such variation.
 - D. Arborist's Review
 - 1. Arborist will provide timely review of Digital Photographs and Samples in accordance with the Schedule of Submittals acceptable to Arborist. Arborist's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 - 2. Arborist's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 - 3. Arborist's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Digital Photograph or Sample. Arborist's review and approval

shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. Resubmittal Procedures

1. Contractor shall make corrections required by Arborist and shall return the required number of corrected copies of Digital Photographs and submit, as required, new Samples for review and approval. Contractor shall prominently direct specific attention in writing to revisions other than the corrections called for by Arborist on previous submittals.

6.18 *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner, whether or not a Claim is pending. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, whether or not a Claim is pending, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Arborist and its Related Entities shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
 3. failure to supply water to trees in the necessary quantity and periodicity to keep the tree(s) from damage from moisture stress or flooding.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
1. observations by Arborist;
 2. recommendation by Arborist or payment by Owner of any progress or final payment;
 3. the issuance of a certificate of Substantial Completion by Arborist or any payment related thereto by Owner;
 4. use or occupancy of the Work or any part thereof by Owner;
 5. any review and approval of a Digital Photograph or Sample submittal or the issuance of a notice of acceptability by Arborist;
 6. any inspection, test, or approval by others; or
 7. any correction of defective Work by Owner.

6.20 *Indemnification*

- A. To the maximum extent allowed by Laws and Regulations, Contractor shall defend, indemnify, and save harmless Indemnities from and against all Charges that arise in any manner from, in connection with, or out of, performance of the Work as a result of acts or omissions of Contractor, any Subcontractor, any Supplier, or any person or organization directly or indirectly employed by any of them or any entity for whose acts any of them may be liable. In performing its duties under this Paragraph 6.20.A, Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to Owner.
- B. *Definitions:* As used in Paragraph 6.20.A above and Paragraphs 6.20.C and 6.20.D below:
1. 'Charges' means claims, judgments, costs, damages, losses, demands, liabilities, obligations, fines, penalties, royalties, settlements, and expenses. Included within 'Charges' are:
 - a. interest and reasonable attorneys' fees assessed as part of any such item;
 - b. amounts for alleged violations of sedimentation pollution or other environmental or pollution laws and regulations – including any such alleged violation that arises out of the

handling, transportation, deposit, or delivery of the items or materials that are involved in performance of the Work;

c. amounts related to Hazardous Environmental Conditions; and

d. amounts related to alleged infringement of patent rights, trade secrets, proprietary information, or copyrights.

2. 'Indemnitees' means Owner and Engineer and the officers, officials, independent contractors, agents, and employees of Owner and Engineer, but does not include Contractor.

- C. *Limitations of Contractor's Obligation:* Neither Paragraph 6.20.A nor any other provision of the Contract Documents shall be construed to require Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.
- D. Nothing in Paragraphs 6.20.A, 6.20.B, or 6.20.C shall affect any warranties in favor of the Owner. This Paragraph 6.20.D is in addition to, and Paragraphs 6.20.A and 6.20.B above shall be construed separately from, any other indemnification provisions that may be in the Contract Documents. This Paragraph 6.20 shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this Contract, but this sentence does not imply that other provisions in the Contract Documents do not survive termination.

6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

ARTICLE 7 - OTHER WORK AT THE SITE

7.01 *Related Work at Site*

- A. Owner may perform other work at or affecting the Site by Owner's own forces or let other direct contracts therefor, or have other work performed at or affecting the Site by utility owners.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owned and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Arborist in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies not reasonably discoverable by said inspection in such other work.

7.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Article 7:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 2. the specific matters to be covered by such authority and responsibility will be itemized; and
 3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in Article 7, Owner shall have sole authority and responsibility for such coordination.
- 7.03 *Legal Relationships*
- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
 - B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's actions or inactions.
 - C. Contractor shall be liable to Owner and any other contractor for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's action or inactions.
- 7.04 *Other Work*
- A. The Agreement, Paragraph 1.10.H.3, stipulates any other work on the Site at the time of Notice to Proceed known to the City of Durham and the Arborist.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

- 8.01 *Replacement of Arborist*
- A. If Owner appoints a substitute Arborist, the substitute Engineer shall have the same status under the Contract Documents as the former Engineer.
- 8.02 *Furnish Data*
- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.
- 8.03 *Pay When Due*
- A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.
- 8.05 *Lands and Easements; Reports and Tests*
- A. Owner's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05.
- 8.06 *Insurance*
- A. Owner's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in Article 5.
- 8.07 *Change Orders*
- A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.
- 8.08 *Inspections, Tests, and Approvals*
- A. Owner's responsibility in respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.
- 8.09 *Limitations on Owner's Responsibilities*
- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- 8.10 *Undisclosed Hazardous Environmental Condition*
- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.05.
- 8.11 *Evidence of Financial Arrangements*

- A. If and to the extent Owner has agreed to furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents, Owner's responsibility in respect thereof will be as set forth in Article 8.

ARTICLE 9 - AROBRIST'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

- A. Arborist will be Owner's representative during the construction period. The duties and Responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents and will not be changed without written consent of Owner and Engineer.

9.02 *Visits to Site*

- A. Arborist will make visits to the Site at intervals appropriate to the various stages of construction as Arborist deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Arborist, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Arborist will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Arborist's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Arborist will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Arborist's visits and observations are subject to all the limitations on Arborist's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Arborist's visits or observations of Contractor's Work Arborist will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

- A. If Owner and Arborist agree, Arborist will furnish a Resident Project Representative to assist Arborist in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in Article 9, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Arborist's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in Article 9.
- B. The Resident Project Representative will serve as Arborist's liaison with Contractor, working principally through Contractor's Superintendent to assist such Superintendent in understanding the intent of the Contract Documents.
- C. The Resident Project Representative shall have the following authority, to the extent that Engineer has such authority: to conduct on-site observations of the Work in progress to confirm that it is proceeding in accordance with the Contract Documents; to verify that tests, equipment, and systems start-ups and maintenance instructions are conducted as required by the Contract Documents; and to disapprove and reject defective Work in accordance with the Contract Documents, including Article 13. No approval, inspection, failure to reject, or other action or failure to act by the Resident Project Representative shall reduce or waive Owner's right to non-defective Work that meets the requirements of the Contract Documents.
- D. Except upon written instructions of Arborist and Owner, the Resident Project Representative shall not:
 - 1. authorize any deviation from the Contract Documents or approve any substitute materials or equipment;
 - 2. exceed limitations of Arborist's authority as set forth in the Contract Documents;
 - 3. undertake any of the responsibilities of Contractor, Subcontractors, or Contractor's

- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Arborist's review of the final Application for Payment and accompanying documentation and all maintenance and watering schedules, guarantees, bonds and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to, the Resident Project Representative, if any, and assistants, if any.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.
- C. The Owner reserves the right to add to the original scope of Unit Price Work of the Contract upon the same terms and at the same unit prices included in the Agreement for all unit item additions, provided that such additions shall not result in an increase of more than fifty percent (50%) of the original Contract Price. The Contractor may be entitled to an extension in the Contract Times with the addition of Unit Price Work.
- D. The Contractor shall perform emergency Work as required by the City of Durham. In such instances, the Arborist or Resident Project Representative shall give written notice to the Contractor for each instance of emergency Work. The Contractor shall perform all emergency Work within seventy-two (72) hours of the written notice. The City may perform (or engage another contractor to perform) emergency Work, at the Contractor's expense, if the Contractor fails to perform emergency Work within the time limit. If the City performs (or engages another contractor to perform) the following conditions apply:
 - 1. if emergency Work is not a Unit Price Work item, the City shall charge all costs and expenses of the emergency Work, plus the City's then-current overhead charge to the Contractor and deduct those amounts from any money due to Contractor on the then-current or then future Applications for Payment; and

2. if the emergency Work is a Unit Price Work Item, the City will charge all applicable emergency Work unit costs, plus an administrative and overhead charge of one hundred dollars (\$100.00) per instance to the Contractor and deduct those amounts from any money due to Contractor on the then-current or then-future Applications for Payment.

10.02 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in the Contract Documents, including Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.B.

10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
 1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
 2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
 3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *Notification to Surety*

- A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any bond to be given to a surety, the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.05 *Claims*

- A. *Arborist's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Arborist for decision. A decision by Arborist shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim, shall be delivered by the claimant to Arborist and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Arborist or Owner allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Arborist or Owner allows additional time).
- C. *Arborist's Action:* Arborist will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part,
 2. approve the Claim, or
 3. notify the parties that the Arborist is unable to resolve the Claim if, in the Arborist's sole discretion, it would be inappropriate for the Arborist to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Arborist does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Arborist's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor:
1. invokes the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial, or
 2. if the dispute resolution procedures set forth in Article 16 are not invoked and the appealing party institutes a formal proceeding, within 30 days of such action or denial, in a forum of competent jurisdiction (allowed under the Contract) to exercise such rights or remedies as the appealing party may have with respect to the Arborist's decision, unless otherwise agreed in writing by Owner and Contractor. The City Manager has authority to enter into a written agreement extending the time period during which either party may institute such a formal proceeding.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.
- G. *Mitigation of Damages:* Once a party recognizes that it has grounds for a Claim, dispute, or other matter that may be submitted to Arborist (whether or not it may also be submitted to the other party), it shall use its best efforts to furnish Arborist and the other party, as expeditiously as possible, with notice of the potential Claim, dispute, or other matter. The potential claimant shall cooperate with Engineer and the party against whom the potential Claim, dispute, or other matter may be made in an effort to mitigate damages, delay, and other adverse consequences arising out of the condition which is the cause of the potential claim, dispute, or other matter. This duty to mitigate continues after the notice of Claim, dispute, or other matter is actually delivered.
- H. These requirements, including as to time, are of the essence of the Contract Documents. No course of conduct or dealings between the parties, no express or implied acceptance of alterations or additions to the Work, and no assertion that the Owner has been unjustly enriched by any alteration or addition to the Work shall be the basis for any Claim to an increase in the Contract Price. In addition, all of Paragraphs 9.08.C and 9.08.D shall apply to those claims.
- 10.06 *Change Orders*
- A. Unless the Contract Documents or the Change Order provides otherwise, agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including all direct and indirect costs associated with such change and any and all adjustments to the Contract Price and the construction schedule. If a Change Order increases the Contract Price, Contractor shall include the Work covered by such Change Orders in Applications for Payment.

ARTICLE 11 - COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

- 11.01 *Cost of the Work*
- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of overtime or of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
 3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
 4. Supplemental costs including the following:
 - a. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Arborist, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. These rates shall include all fuel, lubricants, insurance, etc. Equipment rental charges shall not exceed the prorated monthly rental rates listed in the edition of the 'Compilation of Rental Rates for Construction Equipment', as published by the Associated Equipment Distributors, which is current when the equipment rental begins. Charges per hour shall be determined by dividing the monthly rates by 176. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. The cost of utilities, fuel, and sanitary facilities at the Site.
- B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:
1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A and 11.01.B.
- C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.
- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting and in accordance with Owner's and Arborist's instructions practices and submit in a form acceptable to Arborist an itemized cost breakdown together with supporting data. The Owner and Arborist may specify additional or different requirements in accordance with the preceding sentence, but unless they so specify, the following is required in order to support a determination of cost of Work pursuant to Paragraph 11.01:
1. For costs under Paragraph 11.01.A.1, for each person who worked on the additional Work: a statement showing his or her job title, hourly rate paid or other method of compensation, other amounts described under Paragraph 11.01.A.1 that were paid, and the net change in the number of hours worked attributable to the change in the Work.
 2. For costs under Paragraph 11.01.A.2, dated receipts from the Subcontractors and/or Subsubcontractors. The receipts must acknowledge the Contractor's payment, identify the materials, supplies, equipment and show the name of the Owner's Project.
 3. For costs under Paragraph 11.01.A.5.c, dated receipts from the rental the Subcontractors and/or Subsubcontractors. The receipts must acknowledge the Contractor's payment, identify the machinery and equipment, and show the name of the Owner's Project, the rental rate, and the number of hours, days, miles, or other basis of the machinery or equipment, the statement must show the rental rate and the number of hours, days, miles, or other basis of the charge, and the rental rate must not exceed the market rental rate.
 4. For costs under Paragraph 11.01.A.5.i, written proof of a net change in the amount paid by the Contractor attributable to the change in the Work. For bonds, the proof must include the invoice or statement from the surety or its agent showing that it is attributable to the change in the Work.

11.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. Cash Allowances
1. Contractor agrees that:
 - a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. Contingency Allowance

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
 - D. Prior to final payment, an appropriate Change Order will be issued as recommended by Arborist to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.
- 11.03 *Unit Price Work*
- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
 - B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. If Owner changes any estimate of quantity before the Agreement is executed, it may substitute the new estimated quantity in those calculations. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Arborist subject to the provisions of Paragraph 9.07.
 - C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead, profit, and cost for coordinating the Work with the City of Durham for each separately identified item.
 - D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 2. there is no corresponding adjustment with respect any other item of Work; and
 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.
 - E. Each unit price shall be deemed to include an amount considered by the Contractor to be adequate to cover all construction surveying and existing utility location required to complete the Work as specified, or as directed by the Engineer, for each separately identified item.
 - F. This Paragraph 11.03.F applies except to the extent if any that the Bidding Documents specify otherwise.
 1. Unit prices, if any, shall apply to Work done pursuant to Change Orders and to Work Change Directives.
 2. In addition to Paragraph 11.03.F.1, it is agreed:
 - a. If unit price items are included in the Contract Documents for Work other than Work done pursuant to Change Orders and to Work Change Directives, it is also agreed that the Contract Price was calculated on the assumption that certain estimated quantities of unit price items will be used in the Work. Those estimated quantities are stated in the Contract Documents. The unit price multiplied by the quantity is referred to as the 'extension.'
 - b. If the actual extension of a unit price item is less than the estimated extension, the Contract Price shall be reduced accordingly.
 - c. The actual extension of each unit price item shall not exceed the estimated extension for that item unless the Contractor has received advance written approval from the Arborist to exceed the estimated quantity for that item. That approval may be limited in the Engineer's discretion. If that approval is given, the Contract Price shall be adjusted as follows:
 - 1) If the actual quantity of a unit price item is more than the estimated quantity, the Contract Price shall be increased to reflect the difference between the actual and the estimated quantities.
 - 2) If approval is not given, the Contractor shall not be obligated to use the quantity of that unit price item that exceeds the approved quantity, and a Change Order or Work Change Directive shall be executed to reflect the changes in the Work resulting from the actual quantity of the item that is used.
 - 3) If the Contract Documents explicitly and clearly state that no further approval from the Engineer or the Owner is required for the Contractor to exceed the

estimated quantity of specified unit price items, then it is agreed that the Contract Price shall be adjusted to reflect the actual quantities of those items without the necessity of further approval.

ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Arborist and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
 - 1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
 - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 2.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:
 - 1. a mutually acceptable fixed fee; or
 - 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be ten percent (10%) and shall not be applied to payroll taxes, social security contributions, or unemployment taxes;
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of ten percent (10%) of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 (excluding payroll taxes, social security contributions, and unemployment taxes) and that the next higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Arborist and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God. Nothing in Article 12 or any other provision of the Contract Documents is intended to forbid or limit compensable damages for delays caused solely by the Owner or the Owner's agent, and any provision to the contrary shall be construed to comply with this Paragraph 12.03.A. For purposes of this Paragraph 12.03.A, 'Owner' or the 'Owner's agent' does not include prime contractors or subcontractors.
- B. If Owner or Owner's agent delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times, Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C. Except to the extent, if any, that it may otherwise be provided in the Contract Documents, Contractor's sole remedy for any of the following:
 - 1. delay in the commencement, prosecution, or completion of the Work,
 - 2. hindrance or obstruction in the performance of the Work,
 - 3. loss of productivity, or
 - 4. other similar delays and losses (said 1, 2, 3, and 4 being collectively referred to in this Paragraph 12.03 as 'Such Delays'). Whether or not Such Delays are foreseeable, shall be an extension of the Contract Times if permitted and granted under this Article 12. To the extent allowed by the Contract Documents, Contractor shall be entitled to no other compensation or recovery of any damages in connection with any Such Delays, including consequential damages, lost opportunity costs, impact conflict, the Contract or Agreement as signed by the Owner and Contractor shall control this Paragraph 12.03.C.
- D. Owner, Arborist and the Related Entities of each of them shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.
- F. Adjustment of Contract Times for weather related delays shall be as stipulated in the Agreement, Paragraph 1.4.D.

ARTICLE 13 - TESTS AND INSPECTIONS: CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Notice of Defects*

- A. Prompt notice of all defective Work of which Owner or Arborist has actual knowledge will be given to Contractor. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

- A. Owner, Arborist, their consultants and other representatives and personnel of Owner, consulting Arborists, Plant Pathology specialists, and governmental agencies with jurisdictional interests will

have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and programs so that they may comply therewith as applicable.

13.03 *Tests and Inspections*

- A. Contractor shall employ and pay for all inspections and testing services required by the Contract Documents, except those for which the Contract Documents specifically call for Owner to employ and pay.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all the inspections, tests, or approvals required by the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Arborist the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Arborist.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.
- G. The City of Durham may engage an independent consultant for the direct inspection and administration of any or all of the Work to be performed in the Contract. This consultant shall act on the behalf of the City of Durham.

13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, or contrary to the Contract Documents, or before required inspections, tests, or approvals, it must, if requested by Arborist, be uncovered for Arborist's observation and replaced at Contractor's expense.
- B. If Arborist considers it necessary or advisable that covered Work be observed by Arborist or inspected or tested by others, Contractor, at Arborist's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Contractor shall not be entitled to any increase in Contract Times because of the time involved in such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. If, the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor

as provided in Paragraph 10.05. However, if such Work had been prematurely covered, the preceding sentence shall not apply, and Contractor shall have no such rights.

13.05 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, or persistently fails to carry out the Work in accordance with the Contract Documents, or if the Work interferes with the operation of the existing facility, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Arborist remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others). Arborist and Owner may reject any defective Work, even if inspected and paid for, except to the extent accepted under Paragraph 13.08. A failure to disapprove or reject such defective Work does not constitute an acceptance.
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly (but in any event, commencing within thirty (30) days after receipt of said instructions and proceeding promptly to completion), without cost to Owner and in accordance with Owner's written instructions:
 - 1. repair such defective land or areas; or
 - 2. correct such defective Work; or
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly (but in any event, commencing within 30 days after receipt of said instructions and proceeding promptly to completion) comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications. If prior to the date of Substantial Completion,

Contractor or any entity for which Contractor is responsible uses or damages any portion of the Work, then Contractor, at no expense to Owner, shall cause such portion, system, device, or item to be restored (whether by replacement, repair, or otherwise) to the condition the item was required to be in, if such use or damage had not occurred. Nothing herein shall reduce the duty of Contractor with respect to such item in order to obtain a final payment.

- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.
- F. Establishment of the one (1) year periods in this Paragraph 13.07 relates only to the specific obligation of Contractor to take certain actions relating to defective Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced.

13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Arborist's recommendation of final payment, Arborist) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Arborist's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.
- B. An acceptance of defective Work is not effective as an acceptance unless it specifically describes the condition that is defective and contains substantially the following statement: 'The Owner accepts [such condition] despite its being defective.'

13.09 *Owner May Correct Defective Work*

- A. If Contractor fails after written notice from Arborist to correct defective Work or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work some or all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow and provide Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site and storage locations referred to in the preceding sentence to enable Owner to exercise the rights and remedies under this Paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph

13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. Applications for Payments

1. At least 20 days before the date established in the Agreement for each progress payment but not more often than once a month), Contractor shall submit to Arborist for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein including the transportation to the Work Site, all of which must be satisfactory to Owner.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
4. Contractor shall submit the Subcontractor Monthly Record of Payment Report form with each Application for Payment, except for the initial and final Application for Payment. The Contractor shall submit the Final Subcontracting Report form with the final Application these forms, which are provided in Appendix C, may be a basis for denying payment.

B. *Review of Applications*

1. Arborist will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Arborist's recommendation of any payment requested in an Application for Payment will constitute a representation by Arborist to Owner, based on Engineer's observations on the Site of the executed Work as an experienced and qualified design professional and on

Arborist's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

- a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and to any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
- a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
 - b. that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Arborist's recommendation of any payment, including final payment, will impose responsibility on Engineer:
- a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Arborist may refuse to recommend the whole or any part of any payment if, in Arborist's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as maybe necessary in Engineer's opinion to protect Owner from loss because:
- a. any of the Work, whether or not paid for, is defective, except to the extent accepted under Paragraph 13.08, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09;
 - d. Engineer has actual knowledge of or reasonable grounds to believe in the occurrence of any of the events enumerated in Paragraph 15.02.A.
 - e. there are reasonable grounds to believe that the Work cannot be completed for the unpaid balance of the Contract Price; or
 - f. Contractor is anticipated to owe damages or other amounts to Owner.

C. *Payment Becomes Due*

1. Thirty (30) days after presentation of the Application for Payment to Owner with Arborist's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. *Reduction in Payment*

1. Owner may refuse to make payment of the full amount recommended by Arborist because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling Owner to a set-off, including any cost or expense related to defective Work, against the amount recommended;
 - d. Owner has actual knowledge of or reasonable grounds to believe in the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
 - e. any of the property and casualty insurance requirements enumerated in Article 5 are not complied with at their renewal dates.
 - f. there are reasonable grounds to believe that the Work cannot be completed for the unpaid balance of the Contract Price; or
 - g. Contractor is anticipated to owe damages or other amounts to Owner.
2. If Owner refuses to make payment of the full amount recommended by Arborist, Owner will give Contractor immediate written notice (with a copy to Arborist) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor corrects to Owner's satisfaction the reasons for such action.
3. If it is subsequently determined that Owner's refusal of payment was not justified, the amount wrongfully withheld, as determined in a competent jurisdiction having binding authority, shall be treated as an amount due as determined by Paragraph 14.02.C.1.
4. Failure of Owner to refuse to make payment does not waive Owner's rights under the Contract Documents.

14.03 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.
- B. The Application for Payment shall be accompanied by such data, satisfactory to Owner, as will protect his interest therein, including applicable insurance. Each subsequent Application for Payment shall include an Affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied to discharge in full all of Contractor's obligations reflected in prior Applications for Payment.

14.04 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Arborist in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Arborist issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Arborist shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after

considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will within 14 days after submission of the tentative certificate to Owner notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will within said 14 days execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected), including the time within which each of those items shall be completed or corrected, reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

- D. At the time of delivery of the tentative certificate of Substantial Completion, Arborist will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Arborist in writing prior to Arborist's issuing the definitive certificate of Substantial Completion, Arborist's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to complete or correct items on the tentative list.

14.05 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Arborist will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.06 *Final Payment*

- A. Application for Payment
 - 1. After Contractor has, in the opinion of Arborist, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
 - 2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.7;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled; and
 - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
 - 3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or Owner's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.
- B. Arborist's Review of Application and Acceptance

1. If, on the basis of Arborist's observation of the Work during construction and final inspection, and Arborist's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Arborist is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Arborist will, within ten days after receipt of the final Application for Payment, indicate in writing Arborist's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Arborist will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Arborist will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
2. Without extra charge to Contractor, Arborist will make only two (2) such inspections to determine final completion. If Arborist is not able to make the representations and findings required to recommend final payment, successive inspections requested by Contractor shall be charged to Contractor.

C. **Payment Becomes Due**

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and , will be paid by Owner to Contractor.

14.08 *Final Completion Delayed*

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Arborist so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Arborist, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

- A. The making and acceptance of final payment will constitute:
 1. no waiver of any claims, or the right to make any claims, by Owner against Contractor, including Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
 2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

14.10 *Prompt Payment to Subcontractors*

- A. Within seven (7) days of receipt by Contractor of each payment from the City of Durham under this Contract, the Contractor shall pay all Subcontractors (including Suppliers and others) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than seven (7) days after receipt of payment by the Contractor from the City under this Contract, the Contractor shall pay the Subcontractor interest, beginning on the eighth (8th) day, at the rate of one percent (1%) per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this Paragraph 14.10.A directly against the Contractor, but not against the City of Durham. If the

Arborist determines that it is appropriate to enforce this Paragraph 14.10.A, the City of Durham may withhold the sums estimated by the Arborist to be sufficient to pay this interest from progress or final payments to the Contractor.

- B. Nothing in this Paragraph 14.10 shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the Subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another Subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage consistent with the Agreement.
- C. The Arborist may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any Subcontractors designated by the Arborist regarding the status of their accounts with the Contractor. The statements shall be in such format as the Arborist reasonably requires, including notarization if so specified.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Arborist which will fix the date on which, or the event after which, Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05. No adjustment shall be made to the extent that performance is, was, or would have been suspended, delayed, or interrupted directly or indirectly by Contractor or any Entity for which Contractor is responsible. The Contract Price shall not be adjusted except to the extent that the total of such suspensions exceeds thirty (30) days and after excluding such thirty day period.

15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 - 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 - 3. Contractor's disregard of the authority of Engineer; or
 - 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
 - 1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion),
 - 2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and
 - 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any

further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Arborist as to their reasonableness and, when so approved by Arborist, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph Owner shall not be required to obtain the lowest price for the Work performed.

- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B, and 15.02.C.

15.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Arborist, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, as determined in Article 11;
 - 2. expenses sustained prior to the effective date of termination in ordering materials, as required by the Contract Documents in connection with uncompleted Work, the Owner shall have the options detailed in Paragraphs 15.03.A.2.a through 15.03.A.2.d;
 - a. Upon seven (7) days of receipt of the notice of termination for convenience Contractor shall provide evidence of materials ordered as described in Paragraph 15.03.A.2 including an itemized list, cost, order and delivery dates, and all terms or conditions (including ordering, canceling, or restocking charges).
 - b. Owner may direct the Contractor to cancel any one or more orders, in which case the Owner shall be liable for cancellation and restocking charges and other charges properly attributable to the cancellation; or
 - c. Owner may direct the Contractor to keep any one or more orders in effect and/or to assign any one or more orders to the Owner, in which case the Owner shall be responsible for bearing the costs of the order.
 - d. Within ten (10) days of the Owner's receiving the evidence described in Paragraph 15.03.A.2.a, the Owner shall give the Contractor notice of which options it exercises under Paragraphs 15.03.A.2.b or 15.03.A.2.c.
 - 3. The Owner shall pay the Contractor a termination fee of one hundred dollars (\$100.00) in addition to other amounts due pursuant to this Paragraph 15.03.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Arborist fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Arborist do not remedy such suspension or

failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Arborist has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Arborist, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

15.05 Protection and Preservation of the Work

- A. Upon suspension (Paragraph 15.01), termination (Paragraphs 15.02, 15.03, and 15.04), or stopping Work (Paragraph 15.04):
1. Contractor shall take actions necessary for the protection and preservation of the Work, and Site, including those actions required by the Contract, except to the extent otherwise directed by the Engineer; and
 2. Contractor shall erect and leave in place barricades, lights, and other safety devices as are appropriate for the protection of the public, including those devices required by the Contract, except to the extent otherwise directed by the Engineer.
- B. If the Contractor performs work pursuant to directions given by the Engineer as described in Paragraph 15.05.A for the protection and preservation of the Work or of the public, Owner shall pay the Contractor for such protection and preservation work to the extent that it is greater than the Contractor would have done during or at the end of a work day had the contract not been suspended or terminated or the Work stopped.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 Methods and Procedures

- A. Any party allowed to use the dispute resolution process adopted by the State Building Commission pursuant to G. S. 143-135.26(11) and G. S. 143-128(F1) may participate in mediation pursuant to the dispute resolution process as a precondition to initiating litigation concerning the dispute. The amount of \$15,000 or more must be at issue before a party may require other parties to participate in the dispute resolution process. The costs of the dispute resolution process shall be divided between the parties to the dispute with at least one-third of the cost to be paid by the Owner, if the Owner is a party to the dispute.

ARTICLE 17 - MISCELLANEOUS

17.01 Giving Notice

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
1. delivered by facsimile or in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or
 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.
- B. If a party is notified of a replacement person for purpose of getting notice, then notices afterwards shall be directed to the replacement person. Written notices shall be deemed to have been duly served, made, and received, and receipt thereof completed, if:
1. delivered in person to the individual or to that individual's receptionist; or

2. mailed by registered or certified mail to the last business address known to the party giving notice; or
 3. faxed to the last fax number known to the party giving notice, provided that the fax transmission must be completed.
- C. Written notices to the Owner must be directed to the Owner's representative, provided that if no individual is designated as the Owner's representative, then written notices must be directed to the City Manager. As used in this Paragraph 17.01, the word 'notice' includes 'request.'
- D. The notice will be deemed served, made, and received, and receipt thereof completed, on the earlier of:
1. the date delivered in person; or
 2. three (3) days after placing in the custody of the U. S. Postal Service; or
 3. the date the fax transmission was completed.
- E. *Address of Surety:* Unless the surety provides a different address as provided in Paragraph 17.01, notice to a surety may be sent to the address shown on the performance bond; if no address for the surety is shown on the performance bond, the surety's address provided by the N. C. Department of Insurance shall suffice; and if the Department of Insurance lacks an address, the last known address of the attorney-in-fact who signed the performance bond shall suffice.
- 17.02 *Computation of Times*
- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation. As used in the preceding sentence, a 'legal holiday by the law of the applicable jurisdiction' is a holiday observed by city government of the City of Durham. See City Code Section 42-16 for information on such holidays.
- 17.03 *Cumulative Remedies*
- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.
- 17.04 *Survival of Obligations*
- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.
- 17.05 *Controlling Law* A. This Contract is to be governed by the law of the state in which the Project is located.
- 17.06 *Headings*
- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.
- 17.07 *Effect on Other Rights*
- A. The Contract Documents shall not be construed to create a cause of action against Owner and in favor of any person, firm, or corporation, other than Contractor. The Contract Documents shall not be construed to create a cause of action against Engineer and in favor of any person, firm, or corporation, other than Owner. The Contract Documents are not intended to create a defense, except

by Contractor, to any cause of action that may be brought by Owner. The recitation of duties, or limitations of duties, in the Contract Documents (e.g., Paragraph 9.09) of Engineer or Engineer's consultants, representatives, and assistants, shall not be construed to reduce Owner's rights against Engineer or to reduce Arborist's duties to Owner. No action or failure to act by Owner shall constitute a waiver of a right except to the extent specifically agreed in writing. If Owner waives a right, that waiver shall not imply other waivers of that right. If liquidated damages are assessable against the Contractor, Owner may, in its discretion, waive the imposition of some or all of the liquidated damages against the Contractor. That waiver shall be valid only if done by a writing signed by the City Manager or an Assistant City Manager, and the waiver must refer specifically to 'liquidated damages.' That waiver shall not constitute an extension of the Contract Time

- B. The Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations and representations. Except as specifically otherwise provided, the Agreement is not intended to benefit, or to create a cause of action in favor of, any person, firm, or corporation, other than Owner and Contractor. Oral statements by anyone, including Owner's employees, agents, and Engineer, whether made before or after the execution of the Agreement, shall not be binding on Owner and shall not reduce Owner's rights under the Contract Documents.

17.08 *Place of Project*

- A. *Choice of Law and Forum:* The place of the Project is North Carolina. This Contract shall be deemed made in Durham, North Carolina. This Contract shall be governed by and construed in accordance with the laws of North Carolina. The exclusive forum and venue for all actions arising out of this Contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This Paragraph shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this Paragraph.

17.09 *Equal Employment Opportunity (EEO)*

- A. During the performance of this Contract the Contractor agrees as follows:
1. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions;
 2. Contractor shall in all solicitations or advertisement for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap;
 3. Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding;
 4. in the event of Contractor's noncompliance with these EEO provisions, the City of Durham may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts; and
 5. unless exempted by the City Council of the City of Durham, Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this Contract and in every subcontract related to this Contract so that these EEO provisions will be binding upon such Subcontractors and Suppliers.
- B. *City Policy:* The City of Durham opposes discrimination on the basis of race and sex and urges all

of its contractors to provide a fair opportunity for minorities and women to participate in their work force and as subcontractors and suppliers under City contracts.

17.10 *Americans with Disabilities Act (ADA)*

A. The City of Durham will not discriminate against qualified individuals with disabilities on the basis of disability. Anyone who requires an auxiliary aid or service for effective communications, or assistance to participate in a City program, service, or activity, should contact the office of Stacey Poston, ADA Coordinator, Voice: (919) 560-4197, ext. 254, TTY: (919) 560-4809; Stacey.Poston@durhamnc.gov, as soon as possible but no later than forty-eight (48) hours before the scheduled event.

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SECTION 01 20 00

PRICE AND PAYMENT PROCEDURES

1.1 SUMMARY

- A. Section Includes
 - 1 Contingency allowances.
 - 2 Schedule of values.
 - 3 Applications for payment.
 - 4 Change procedures.
 - 5 Defect assessment.
 - 6 Unit prices.
 - 7 Alternates.
- B. Related Sections:
 - 1 Section 01 33 00 - Submittal Procedures.
 - 2 Section 01 40 00 - Quality Requirements.
 - 3 Section 01 60 00 - Product Requirements.
 - 4 Section 01 70 00 – Execution and Closeout Requirements.

1.2 CONTINGENCY ALLOWANCES

- A. The City of Durham shall include in the Contract, a stipulated rate of 15% of the awarded contract bid for use upon City of Durham's instruction.
- B. Contractor's costs for Products, delivery, installation, labor, insurance, payroll, taxes, bonding, equipment rental, overhead and profit will be included in Change Orders authorizing expenditure of funds from this Contingency Allowance.
- C. Funds will be drawn from Contingency Allowance only by Change Order.

1.3 SCHEDULE OF VALUES

- A. Refer to Appendix J.

1.4 APPLICATIONS FOR PAYMENT

- A. Refer to Appendix J.

SECTION: 01 20 00 - PRICE AND PAYMENT PROCEDURES

1.5 CHANGE PROCEDURES

- A. Submittals: Submit name of individual authorized to receive change documents, and be responsible for informing others in Contractor's employ or Subcontractors of changes to the Work.
- B. The Arborist will advise of minor changes in the Work not involving adjustment to Contract Price or Contract Time by issuing supplemental instructions.
- C. The Arborist may issue a Notice of Change including a detailed description of proposed change with supplementary or revised Drawings and specifications, a change in Contract Time for executing the change.
- D. Contractor may propose changes by submitting a request for change to Arborist, describing proposed change and its effect on the Work. Include a statement describing reason for the change, effect on Work by separate or other Contractors and effect on Contract Price and Contract Time. Document requested substitutions in accordance with Section 01 60 00 - Product Requirements.
- E. Stipulated Price Change Order: Based on Notice of Change and Contractor's estimated price quotation or Contractor's request for Change Order as approved by Arborist.
- F. Unit Price Change Order: For Contract unit prices and quantities, the Change Order will be executed on fixed unit price basis. For unit costs or quantities of units of Work which are not pre-determined, execute Work under Work Directive Change. Changes in Contract Price or Contract Time will be computed as specified for Change Order.
- G. Work Directive Change: Arborist may issue directive, on EJCDC 1910-8-F Work Directive Change signed by Owner, instructing Contractor to proceed with change in the Work, for subsequent inclusion in a Change Order. Document will describe changes in the Work, and designate method of determining any change in Contract Price or Contract Time. Promptly execute change.
- H. Execution of Change Orders: Engineer will issue Change Orders for signatures of parties as provided in Conditions of the Contract.
- I. Correlation Of Contractor Submittals:
 - 1 Promptly revise Schedule of Values and Application for Payment forms to record each authorized Change Order as separate line item and adjust Contract Price.
 - 2 Promptly revise progress schedules to reflect change in Contract Time, revise sub-schedules to adjust times for other items of Work affected by the change, and resubmit.
 - 3 Promptly enter changes in Project record documents.

SECTION: 01 20 00 - PRICE AND PAYMENT PROCEDURES

1.6 DEFECT ASSESSMENT

- A. Replace the Work, or portions of the Work, not conforming to specified requirements.
- B. If, in the opinion of the Engineer, it is not practical to remove and replace the Work, the Engineer will direct appropriate remedy or adjust payment.
- C. The defective Work may remain, but unit price will be adjusted to new price at discretion of Engineer.
- D. Defective Work will be partially repaired to instructions of Engineer, and unit price will be adjusted to new price at discretion of Engineer.
- E. Individual specification sections may modify these options or may identify specific formula or percentage price reduction.
- F. Authority of Engineer to assess defects and identify payment adjustments is final.
- G. Non-Payment For Rejected Products: Payment will not be made for rejected Products for any of the following:
 - 1 Products wasted or disposed of in a manner that is not acceptable.
 - 2 Products determined as unacceptable before or after placement.
 - 3 Products not completely unloaded from transporting vehicle.
 - 4 Products placed beyond lines and levels of required Work.
 - 5 Products remaining on hand after completion of the Work.
 - 6 Loading, hauling, and disposing of rejected Products.

1.7 UNIT PRICES

- A. Authority: Measurement methods are delineated in individual specification sections.
- B. Measurement methods delineated in individual specification sections complement criteria of this section. In event of conflict, requirements of individual specification section govern.
- C. Take measurements and compute quantities. Engineer will verify measurements and quantities.
- D. Unit Quantities: Quantities and measurements indicated in Bid Form are for Contract purposes only. Quantities and measurements supplied or placed in the Work shall determine payment.
 - 1 When actual Work requires more or fewer quantities than those quantities indicated, provide required quantities at unit prices contracted.
 - 2 When actual Work requires twenty-five percent (25%) or greater change in quantity than those quantities indicated, Owner or Contractor may claim for Contract Price adjustment.

SECTION: 01 20 00 - PRICE AND PAYMENT PROCEDURES

E. Payment Includes: Full compensation for required labor, Products, tools, equipment, plant and facilities, transportation, services and incidentals; erection, application or installation of item of the Work; overhead and profit.

F. Final payment for Work governed by unit prices will be made on basis of actual measurements and quantities accepted by Arborist multiplied by unit price for Work incorporated in or made necessary by the Work.

G. Measurement Of Quantities:

1 Weigh Scales: Inspected, tested and certified by the North Carolina Department of Agriculture, Standards Division, Measurement Section within past year.

2 Platform Scales: Of sufficient size and capacity to accommodate conveying vehicle.

3 Metering Devices: Inspected, tested and certified by North Carolina Department of Agriculture, Standards Division, Measurement Section within past year.

4 Measurement by Weight: Concrete reinforcing steel, rolled or formed steel or other metal shapes will be measured by handbook weights. Welded assemblies will be measured by handbook or scale weight.

5 Measurement by Volume: Measured by cubic dimension using mean length, width and height or thickness.

6 Measurement by Area: Measured by square dimension using mean length and width or radius.

7 Linear Measurement: Measured by linear dimension, at item centerline or mean chord.

8 Stipulated Price Measurement: Items measured by weight, volume, area, or linear means or combination, as appropriate, as completed item or unit of the Work.

END OF SECTION

SECTION: 01 20 00 - PRICE AND PAYMENT PROCEDURES

SECTION 01 30 00

ADMINISTRATIVE REQUIREMENTS

1.1 SUMMARY

A. Section Includes

1. Coordination and project conditions.
2. Preconstruction meeting.
3. Site mobilization meeting.
4. Progress meetings.
5. Pre-installation meetings.
6. Special procedures.

B. Related Sections:

- 1 Section 01 20 00 – Price and Payment Procedures.
- 2 Section 01 33 00 - Submittal Procedures.
- 3 Section 01 40 00 - Quality Requirements.
- 4 Section 01 60 00 - Product Requirements.

1.2 COORDINATION AND PROJECT CONDITIONS

- A. Coordinate scheduling, submittals, and Work of various sections of Project Manual to ensure efficient and orderly sequence of installation of interdependent construction elements.
- B. Coordinate completion and clean-up of Work of separate sections in preparation for Substantial Completion and for portions of Work designated for Property Owner's partial use.
- C. After Property Owner occupancy of Site, coordinate access to Site for correction of defective Work and Work not in accordance with Contract Documents, to minimize disruption of Property Owner's activities.

1.3 PRECONSTRUCTION MEETING

A. Arborist will schedule meeting after Notice of Award.

B. Attendance Required: Representative of the City of Durham,
Engineer, and Contractor.

C. Agenda:

- 1 Execution of Owner-Contractor Agreement.
- 2 Submission of executed bonds and insurance certificates.
- 3 Distribution of Contract Documents.
Submission of list of Subcontractors, list of Products,
schedule of values, and progress schedule.
- 4 Designation of personnel representing parties in Contract and
Arborist.

SECTION: 01 30 00 - ADMINISTRATIVE REQUIREMENTS

6. Procedures and processing of field decisions, submittals, substitutions, applications for payments, estimate request, Change Orders, and Contract closeout procedures.
7. Scheduling.

D. Record minutes and distribute copies within two (2) days after meeting to participants, with two (2) copies to Engineer, City of Durham Representative, and those affected by decisions made.

1.4 SITE MOBILIZATION MEETING

A. Arborist will schedule meeting at Site prior to Contractor occupancy.

B. Attendance Required: Representative of the City of Durham, Engineer, Special Consultants, Property Owner, Contractor, Contractor's Superintendent, and major Subcontractors.

C. Agenda:

1. Use of premises by City of Durham, Property Owner, and Contractor.
2. Property Owner's requirements and partial use.
3. Construction facilities and controls provided by City of Durham/Property Owner.
4. Temporary utilities provided by the City of Durham/Property Owner.
5. Survey and construction layout.
6. Security and housekeeping procedures.
7. Schedules.
8. Application for payment procedures.
9. Procedures for testing.
10. Procedures for maintaining record Documents.
11. Inspection and acceptance of equipment put into service during construction period.

D. Record minutes and distribute copies within two (2) days after meeting to participants, with two (2) copies to Engineer, City of Durham Representative, Property Owner and those affected by decisions made.

1.5 PROGRESS MEETINGS

A. Arborist will make arrangements for meetings, prepare agenda with copies for participants, and preside at meetings.

B. Attendance Required: Job superintendent, Representative of the City of Durham, Arborist, as appropriate to agenda topics for each meeting.

C. Agenda:

1. Review minutes of previous meetings.
 2. Review of Work progress.
 3. Field observations, problems, and decisions.
 4. Identification of problems impeding planned progress.
- SECTION: 01 30 00 - ADMINISTRATIVE REQUIREMENTS

5. Review of submittals schedule and status of submittals.
6. Review of off-site material staging and delivery schedules.
7. Maintenance of progress schedule.
8. Corrective measures to regain projected schedules.
9. Planned progress during succeeding work period.
10. Coordination of projected progress.
11. Maintenance of quality and work standards.
12. Effect of proposed changes on progress schedule and coordination.
13. Other business relating to Work.

- D. Record minutes and distribute copies within two (2) days after meeting to participants, with two (2) copies to Engineer, City of Durham Representative, and those affected by decisions made.

1.6 PRE-INSTALLATION MEETINGS

- A. When required in individual specification sections, convene pre-installation meetings at Site prior to commencing Work of specific section.
- B. Require attendance of parties directly affecting, or affected by, Work of specific section.
- C. Notify Arborist four (4) days in advance of meeting date.
- D. Prepare agenda and preside at meeting:
- 1 Review conditions of installation, preparation and installation procedures.
 - 2 Review coordination with related work.
- E. Record minutes and distribute copies within two (2) days after meeting to participants, with two (2) copies to Arborist, and those affected by decisions made.

1.7 SPECIAL PROCEDURES

- A. Materials: As specified in Product sections; Trees are to be of size and species specified and conform quality standards. Amendments to be formulated per results of Soil Sample and requirements of new tree.
- B. Employ skilled and experienced staff to perform Work.
- C. Cut, move, or remove items as necessary for access to Work. Remove and dispose of excess debris and restore site at completion.
- D. Remove and dispose of unsuitable underground material. Replace material with amended soil and mulch as specified for finished Work.
- E. Plant trees per specifications.
- F. Apply pre-emergent herbicide, mulch, and watering device.
- G. Remove debris and abandoned items from area and from concealed spaces, and apply water to new tree within 4hrs of planting.

END OF SECTION

SECTION: 01 30 00 - ADMINISTRATIVE REQUIREMENTS

SECTION 01 33 00

SUBMITTAL PROCEDURES

1.1 SUMMARY

A. Section Includes

1. Types of Submittals
2. Submittal procedures.
3. Submittal manager.
4. Submittal classification.
5. Submittal register.
6. Construction progress schedules.
7. Proposed Products list.
8. Product data.
9. Digital Photographs.
10. Samples.
11. Design data.
12. Test reports.
13. Certificates.
14. Manufacturer's instructions.
15. Withholding of payment, Work stoppage, and delays.

B. Related Sections:

- 1 Section 01 20 00 – Price and Payment Procedures.
- 2 Section 01 40 00 - Quality Requirements.
- 3 Section 01 60 00 - Product Requirements.
- 4 Section 01 70 00 – Execution and Closeout Requirements.

1.2 TYPES OF SUBMITTALS

A. The types of submittal items required to be provided are identified as, but not limited to, the following:

1. Schedules
2. Certifications
3. Soil Mix Formulas
4. Mix Designs
5. Submittal Register
6. Quality Control Plan
7. Test reports

SECTION: 01 33 00 - SUBMITTAL PROCEDURES

1.3 SUBMITTAL PROCEDURES

- A. Submittals are to be made as outlined under this section, the Technical Specifications, and as noted in the Contract Documents. The Arborist may request additional submittals beyond those detailed herein.
- B. Transmit each submittal via email. Refer to Appendix J.
- C. Sequentially number transmittal forms. Mark revised submittals with original number and sequential alphabetic suffix.
- D. Identify Project, Contractor, Subcontractor and supplier; pertinent Photo, Map, and detail number, and specification section number, appropriate to submittal.
- E. Apply signature certifying that review, approval, verification of Products required, field dimensions, adjacent site Work, and coordination of information is in accordance with requirements of the Work and Contract Documents.
- F. Schedule submittals to expedite Project, and submit through email. Refer to Appendix J
- G. For each submittal for review, allow two (2) days. Two (2) copies of the Arborist/City reviewed submittal shall be returned to the Contractor.
- H. Identify variations from Contract Documents and Product or system limitations which may be detrimental to successful performance of completed Work.
- I. Allow space on submittals for Contractor and Arborist review stamps.
- J. When revised for resubmission, identify changes made since previous submission.
- K. Distribute copies of reviewed submittals as appropriate. Instruct parties to promptly report inability to comply with requirements.
- L. Submittals not requested will not be recognized or processed.

SECTION: 01 33 00 - SUBMITTAL PROCEDURES

CONTRACT: ER -5100 EA
2010 STREETScape REPLACEMENT

URBAN FORESTRY DIVISION
DEPARTMENT OF GENERAL SERVICES
CITY OF DURHAM, NORTH CAROLINA

Contractor: _____

Project: _____

_____ Approved – No exceptions noted

_____ Approved with corrections as noted on the submittal
data or attachments (Re-submittal not required)

Signed: _____ Contractor Submittal
Manager

Date: _____

1.4 SUBMITTAL MANAGER

- A. The Contractor shall designate in writing a competent and qualified individual to review and approve submittals for the Contractor and all Subcontractors..

1.5 SUBMITTAL CLASSIFICATION

- A. All submittals shall be designated as one of the following:

- 1 "Information Only": Submittals required by the Technical Specifications to be submitted to the Arborist. Arborist's approval is not necessary.
- 2 "Arborist Approval": Submittals required by the Technical Specifications to be submitted to the Arborist for approval.
- 3 "City of Durham Approval": Submittals required by the Technical Specifications to be submitted to the City of Durham for approval.

SECTION: 01 33 00 - SUBMITTAL PROCEDURES

1.6 SUBMITTAL REGISTER

- A. Submit the initial submittal register and a letter designating the Contractor submittal manager within fifteen (15) days after date established in Notice to Proceed. The Engineer will review the submittal register and approve or request revisions within ten (10) days after receipt. After review, resubmit required revised data within ten (10) days.
- B. A blank copy of the submittal register can be found in Appendix I.
- C. The submittal register will be used to manage and control the flow of submittals and re-submittals for the Contract.
- D. Instructions for Completing Submittal Register
 - 1. Complete a separate submittal register form for each individual section of the Technical Specifications.
 - 2. Column (a), Item No.: Number items sequentially (i.e. 1, 2, 3, etc.)
 - 3. Column (b), Transmittal No.: The transmittal number shall be formatted A-B.C, where:
 - a. A is the Technical Specifications section number (i.e. 01 33 00).
 - b. B is a sequential number for the section beginning with 1 (i.e. 1, 2, 3, etc.).
 - c. C is a number identifying re-submittals that is sequential beginning with 1 (i.e. 1, 2, 3, etc.).
 - d. Example Transmittal Numbers: 1) 01 33 00-1: First submittal in section 01 33 00. 2) 01 33 00-2: Second submittal in section 01 33 00. 3) 01 33 00-1.1: First re-submittal of first submittal in section 01 33 00.
 - 4. Column (c), Submittal Classification: Enter an abbreviation for the classification of submittal from the following:
 - a. Enter IO for "Information Only."
 - b. Enter AA for "Arborist Approval."
 - c. Enter CA for "City of Durham Approval."
 - 5. See Paragraph 1.4 for definitions of the submittal classifications.
 - 6. Column (d), Description: Enter a general description for the item.
 - 7. Column (e), Photo No. or Specification Section: Enter the Photo number or Technical Specification paragraph number.
 - 8. Column (f), Submittal Code: Enter an abbreviation for the type of submittal from the following:
 - a. SCH: Schedule
 - b. PRO: Product Data
 - c. DP: Digital Photo
 - d. SAM: Sample
 - e. RPT: Test Report
 - g. CRT: Certificate
 - h. INS: Manufacturer Instructions

9. Column (g), Construction Activity: Enter the activity number as shown on the construction schedule that requires the item to be submitted. Where a single item applies to multiple activities, enter the earliest activity number.
10. Column (h), Planned Activity Start Date: Enter the planned activity start date for the Work in which the item is included.
11. Column (i), Review Period (Days): Enter the minimum number of days allowed for review, typically two (2) days.
12. Column (j), Requested Date for Approval: Enter the date the Contractor requests the review/approval for a submittal is needed in order to have materials ordered and delivered for the planned activity start date.
13. Column (k), Product Purchase Period: Enter the lead time necessary to procure Products. Coordinate with manufacturers and supplier for accurate time period assessment.
14. Column (l), Scheduled Date of Submittal: Enter the scheduled date for submission to the Engineer/City of Durham. Contractor shall coordinate this date with the Planned Activity Start Date, Column (h).
15. Column (m), Actual Date of Submittal: Enter the actual date of the submittal to the Engineer/City of Durham.
16. Column (n), Review/Approval Action Code: Enter the Engineer/City of Durham approval action code.
17. Column (o), Date of Review/Approval: Enter the date the Engineer/City of Durham review is completed.
18. Column (p), Comments, Remarks, Follow-up: Enter any comments or required actions.

1.7 PLANTING PROGRESS SCHEDULES (SCH)

- A. Email and facsimile will be used to transfer all submittals and distributions. Refer to Appendix J.
- B. Submit initial schedules within fifteen (15) days after date established in Notice to Proceed. The Arborist will review the submitted schedule and approve or request revisions within ten (10) days after receipt. After review, resubmit required revised data within ten (10) days
- C. Submit revised Progress Schedules with each Application for Payment.
- D. The Contractor's scheduler shall have a minimum of five (5) years experience in scheduling construction work similar to the Project.
- E. Distribute copies of reviewed schedules to Arborist, Resident Project Representative, Project Site file, Subcontractors, suppliers, and other concerned parties.

SECTION: 01 33 00 - SUBMITTAL PROCEDURES

- F. Instruct recipients to promptly report, in writing, problems anticipated by projections indicated in schedules.
- G. Submit schedule of work to be completed in electronic format and prepared utilizing a spreadsheet or word processing program..
- H. Show complete sequence of site prep and planting by activity, identifying Work of separate stages and other logically grouped activities. Indicate early and late start, early and late finish, float dates, and duration.
- I. Include Project title, Contract number, Contractor's name, submittal date, scheduler name and signature with the schedule.
- J. Indicate estimated percentage of completion for each item of Work at each submission.
- K. Submit separate schedule of submittal dates for shop drawings, Product data, and samples, and dates reviewed submittals will be required from Arborist.
- L. Revisions To Schedules:
 - 1. Indicate progress of each activity to date of submittal, and projected completion date of each activity.
 - 2. Identify activities modified since previous submittal, major changes in scope, and other identifiable changes.
 - 3. Prepare narrative report to define problem areas, anticipated delays, and impact on Schedule. Report corrective action taken, or proposed, and its effect.
- M. Failure to provide construction progress schedules may result in progress payments being withheld or suitable monies retained to protect the City's of Durham interest until such time as the schedule is provided.
- N. Submit all schedules through Contract and Project Management System. Refer to Appendix J. specified in this section.
- O. The review and acceptance by the Engineer of the Contractor's schedule shall in no way relieve the Contractor of the responsibility to complete the Work with the Contract Time, adjusted in accordance with the provisions of the Contract.

SECTION: 01 33 00 - SUBMITTAL PROCEDURES

1.8 PROPOSED PRODUCTS LIST

- A. Within fifteen (15) days after date of Notice to Proceed, submit list of major Products proposed for use, with name of nursery, manufacturer, trade name, and model number of each Product.
 - 1.Orders for Plant Materials: Submit to Arborist confirmed orders for materials from approved growers listed on the Plant List within 90 days of plant material installation work. Contractor is responsible for payment of deposits required by approved growers. Alternate Growers will be considered per Quality Assurance section above.
- B. For Products specified only by reference standards, give manufacturer, trade name, model or catalog designation, and reference standards.

1.9 PRODUCT DATA (PRO)

- A. Product Data: Manufacturer's Data: Submit to Arborist copies of the manufacturer's and/or source data for all materials specified, including soils.
 - 1. Herbicides, complete with labeling information
 - 2. Fertilizers
- B. Submit number of copies Contractor requires, plus two (2) copies Arborist will retain.

1.10 DIGITAL PLANT PHOTOS (DP)

- A. Plant Photographs: Submit color photographs of representative specimens of each type of tree on the plant list. Photos shall be in digital format and taken from angle that depicts the size and condition of the typical plant to be furnished. A scale rod or other measuring device shall be included in the photograph. For species where more than 20 plants are required, include a minimum of three photos that show the average plant, the best quality plant, and the worst quality plant to be provided. Label each photograph with the plant name, plant size, and name of the growing nursery.

1.11 SAMPLES (SAM)

- A. Samples: Submit samples of all topsoil, soil mixes, mulches, and organic materials. Samples shall weigh 1 kg (2 lb) and be packaged in plastic bags. Samples shall be typical of the lot of material to be delivered to the site and provide an accurate indication of color, texture, and organic makeup of the material.
1. Mulch
 2. Compost (pine bark)
 3. Topsoil
- B. Submit number of samples specified in individual specification sections; Arborist will retain one (1) sample.
- C. Reviewed samples which may be used in the Work are indicated in individual specification sections.
- D. Samples will not be used for testing purposes unless specifically stated in specification section.

1.12 CERTIFICATES (CRT)

- A. Soil Test: Submit soil test analysis report for each sample of topsoil and planting mix from a soil testing laboratory approved by the landscape architect.

1. Provide a particle size analysis, including the following gradient of mineral content:

<u>USDA Designation</u>	<u>Size in mm</u>
Gravel	+2 mm
Very course sand	1-2 mm
Coarse sand	0.5 -1 mm
Medium sand	0.25-0.5 mm
Fine sand	0.1-0.25 mm
Very fine sand	0.05-0.1 mm
Silt	0.002-0.05 mm
Clay	smaller than 0.002 mm

2. Provide a chemical analysis, including the following:

- a. pH and buffer pH
- b. Percentage of organic content by oven-dried weight.

SECTION: 01 33 00 - SUBMITTAL PROCEDURES

- c. Nutrient levels by parts per million, including phosphorus, potassium magnesium, manganese, iron, zinc, and calcium. Nutrient test shall include the testing laboratory recommendations for supplemental additions to the soil based on the requirements of horticultural plants.
 - d. Soluble salt by electrical conductivity of a 1:2, soil: water, sample measured in millimho per cm.
 - e. Cation exchange capacity (CEC).
3. Material Testing: Submit the manufacturers particle size analysis, and the pH analysis and provide a description and source location for the content material of all organic materials.
- A. When specified in individual specification sections, submit certification by manufacturer, installation/application Subcontractor, or Contractor to Arborist, in quantities specified for Product Data.
- B. Indicate material or Product conforms to or exceeds specified requirements. Submit supporting reference data, affidavits, and certifications as appropriate.
- 1. Mulch
 - 2. Compost (pine bark)
 - 3. Topsoil
 - 4. Soil analysis from site samples
- C. Certificates may be recent or previous test results on material or Product, but must be acceptable to Arborist.
- D. Any certificates provided to verify compliance with Contract requirements shall contain the following information:
- 1. Supplier/manufacturer/laboratory letterhead including address.
 - 2. City of Durham Contract number and Site location.
 - 3. Name and address of Contractor.
 - 4. Date of certificate.
 - 5. Product description.
 - 6. Technical Specification reference to certificate requirement.
 - 7. Specific Product test results or reports.
 - 8. Title and signature of official authorized to certify on behalf of firm.
- E. Certificates of inspection shall accompany the invoice for each shipment of plants as may be required by law for transportation. File certificates with the Arborist prior to acceptance of the material. Inspection by federal or state authorities at place of growth does not preclude rejection of the plants at the site.

1.13 MANUFACTURER'S INSTRUCTIONS (INS)

- A. When specified in individual specification sections, submit printed instructions for delivery, storage, and installation to Arborist for delivery to City of Durham in quantities specified for Product Data.
- B. Indicate special procedures, perimeter conditions requiring special attention, and special environmental criteria required for application or installation.

1.14 WITHHOLDING OF PAYMENT, WORK STOPPAGE, AND DELAYS

- A. Failure to provide required submittals and information will result in progress payments being withheld or suitable monies being retained to protect the City of Durham's interest until such time as the required information is submitted per the Technical Specifications. Payment for materials incorporated into the Work will not be made until required submittal information has been approved.
- B. Work on a specific item shall not be allowed to proceed without approved submittals for that item except at the risk of the Contractor. If Work is done with material that is not approved and subsequently does not gain approval, the Contractor shall remove and replace the material at no additional cost to the City of Durham.
- C. Failure of the Contractor to provide adequate time for review and approval in the schedule for submittals shall not constitute a delay caused by the Arborist or City of Durham.

END OF SECTION

SECTION: 01 33 00 - SUBMITTAL PROCEDURES

SECTION 01 40 00

QUALITY REQUIREMENTS

PART 1 GENERAL

1.1 SUMMARY

A. Section Includes

1. Approved Growers
2. Installer Qualifications
3. Plant Qualifications
4. Plant sizing and grading standards
5. Supervision
6. Quality control and control of installation
7. References.

B. Related Sections:

- 1 Section 01 20 00 – Price and Payment Procedures.
- 2 Section 01 70 00 – Execution and Closeout Requirements.

1.2 Approved Growers: Contractor shall purchase all plant material listed in the Plant List on the construction documents and maps from nursery growers as approved by the Arborist.

A. Approved Growers are listed as follows:

- 1) Select Trees, Inc.
- 2) Moon's Tree Farm
- 3) Bold Spring Nursery
- 4) Shiloh Nursery
- 5) Jericho Farm Nursery
- 6) ScotTree Nursery
- 7) Worthington Farms Nursery

B. Alternate Growers: Alternate growers will be considered by the Arborist only if submitted with photographs of current stock of the specified material prior to fifteen (15) days from the actual planting start date. The Arborist will tentatively accept (subject to tagging) or reject alternate growers within one week of date submitted. Alternate growers will require that the Arborist tag 100% of plant materials from acceptable alternate growers. The contractor will be responsible for all expenses related to tagging trips to alternate growers' facilities. The contractor shall provide the Arborist a minimum fifteen (15) days' notice prior to tagging trip. Contractor shall limit tagging trips to no more than two at a maximum of two days each. Contractor shall submit confirmed orders from acceptable alternate growers within one (1) week of tagging by the Arborist. Contractor is responsible for payment of deposits required by acceptable alternate growers.

SECTION: 01 40 00 - QUALITY REQUIREMENTS

1.3 Installer Qualifications: Those submitting bids shall be currently registered with the North Carolina Landscape Contractors Registration Board, and have been actively and directly engaged in landscape installations of similar scope, size and complexity, and provide proof of three (3) or more successful installations in the past two years that demonstrate successful projects of the magnitude and scope represented in this project.

1.4 Plant Qualifications: Plants shall be true to species and variety specified and nursery-grown in accordance with good horticultural practices under climatic conditions similar to those in the locality of the project for at least two years. They shall have been freshly dug (during the most recent favorable harvest season).

1. Nomenclature: All plant names and descriptions shall be as defined in *Hortus Third*.
2. Nursery Selection: The list of approved nurseries have all been visited by the Arborist and it will be assumed that all plants from these sources have been grown and harvested in accordance with the *American Standard for Nursery Stock* and shall be of specimen quality, exceptionally heavy, symmetrical, and so trained or favored in development and appearance as to be unquestionably and outstandingly superior in form, compactness, and symmetry. They shall be sound, healthy, vigorous, well branched, and densely foliated when in leaf; free of disease and insects, eggs, or larvae; and shall have healthy, well-developed root systems. They shall be free from physical damage or other conditions that would prevent vigorous growth.
 - A. Trees with multiple leaders, unless specified, will be rejected. Trees with a damaged or crooked leader, bark abrasions, sunscald, disfiguring knots, insect damage, or cuts of limbs over 20 mm (3/4 in.) in diameter that are not completely closed will be rejected.
 - B. Plants shall conform to the measurements specified, except that plants larger than those specified may be used if approved by the landscape architect. Use of larger plants shall not increase the contract price. If larger plants are approved, the root ball shall be increased in proportion to the size of the plant.

SECTION: 01 40 00 - QUALITY REQUIREMENTS

1. Caliper measurements shall be taken on the trunk 150 mm (6 in.) above the natural ground line for trees up to and including 100 mm (4 in.) in caliper. Height and spread dimensions specified refer to the main body of the plant and not from branch tip to branch tip. Plants shall be measured when branches are in their normal position. If a range of sizes is given, no plant shall be less than the minimum size, and no less than 50 percent of the plants shall be as large as the maximum size specified. Measurements specified are minimum sizes acceptable after pruning, where pruning is required. Plants that meet measurements but do not possess a standard relationship between height and spread, according to the *American Standards for Nursery Stock*, shall be rejected.
- C. Substitutions of plant materials will not be permitted unless authorized in writing by the landscape architect. If proof is submitted in writing that a plant specified is not obtainable, consideration will be given to the nearest available size or similar variety, with a corresponding adjustment of the contract price.
- D. The plant list at the end of this section, or on the Map, is for the contractor's information only, and no guarantee is expressed or implied that quantities therein are correct or that the list is complete. The contractor shall ensure that all plant materials shown on the drawings are included in his or her bid.
- E. All plants shall be labeled by plant name. Labels shall be attached securely to all plants when delivered. Plant labels shall be durable and legible, with information given in weather-resistant ink or embossed process lettering.
- F. Selection and Tagging
 1. Plants shall be subject to inspection for conformity to specification requirements and approval by the Arborist at their place of growth and upon delivery. Such approval shall not impair the right of inspection and rejection during progress of the work.

SECTION: 01 40 00 - QUALITY REQUIREMENTS

2. A written request for the inspection of plant material at their place of growth shall be submitted to the Arborist at least ten calendar days prior to digging. This request shall state the place of growth and the quantity of plants to be inspected. The Arborist may refuse inspection at this time if, in his or her judgment, sufficient quantities of plants are not available for inspection.
3. All plants shall be selected and tagged by the Arborist or his chosen representative at their place of growth. For distant material, photographs may be submitted for pre-inspection review.

G. Balled and Burlapped (B&B) Plant Materials

1. Trees designated B&B shall be properly dug with firm, natural balls of soil retaining as many fibrous roots as possible, in sizes and shapes as specified in the *American Standard for Nursery Stock*. Balls shall be firmly wrapped with nonsynthetic, rottable burlap and secured with nails and heavy, nonsynthetic, rottable twine. The root collar shall be apparent at surface of ball. Trees with loose, broken, processed, or manufactured root balls will not be accepted, except with special written approval before planting.

1.5 Supervision: Planting shall be performed only by experienced workmen familiar with planting procedures and under the supervision of a qualified supervisor. Contractor is required to have an English-speaking Supervisor on the site at all times.

1.6 QUALITY CONTROL AND CONTROL OF INSTALLATION

- A. Monitor quality control over suppliers, manufacturers, Products, services, Site conditions, and workmanship, to produce Work of specified quality.
- B. Comply with the Contract Specifications, City of Durham Specifications, and North Carolina Department of Transportation Standards, including each step in sequence.
- C. Comply with manufacturers' or growers' instructions, including each step in sequence.

SECTION: 01 40 00 - QUALITY REQUIREMENTS

- E. Comply with specified standards as minimum quality for the Work except where more stringent tolerances, codes, or specified requirements indicate higher standards or more precise workmanship.

1.7 REFERENCES

- A. All work is to be performed in accordance with the Contract.. Copies of Contract Specifications may be obtained from Arborist or his representative through an email request: alexander.johnson@durhamnc.gov.
- B. All Work shall conform to the following standards
 - A. *American National Standards for Tree Care Operations, ANSI A300*. American National Standards Institute, 11 West 42nd Street, New York, N.Y. 10036.
 - B. *American Standard for Nursery Stock, ANSI Z60.1*. American Nursery and Landscape Association, 1250 Eye Street. NW, Suite 500, Washington, D.C. 20005.
 - C. *Hortus Third*, The Staff of the L.H. Bailey Hortorium. 1976. MacMillan Publishing Co., New York.
- D. All standards shall include the latest additions and amendments as of the date of advertisement for bids
- C. Conform to reference standard by date of issue current on date of Contract Documents, except where specific date is established by code. When specified reference standards conflict with Contract Documents, request clarification from Arborist before proceeding.
- D. Neither contractual relationships, duties, responsibilities of parties in Contract nor those of Arborist shall be altered from Contract Documents by mention or inference otherwise in reference documents.

END OF SECTION

SECTION: 01 40 00 - QUALITY REQUIREMENTS

SECTION 01 50 00

TEMPORARY FACILITIES AND CONTROLS

1.1 SUMMARY

- A. Section Includes:
 - 1. Temporary Utilities:
 - a. Temporary sanitary facilities.
 - 2. Construction Work Zone:
 - a. Public Advisory
 - b. Towing Vehicles in Work Zone
 - c. Progress cleaning and waste removal.
 - d. Traffic regulation.
 - 3. Temporary Controls:
 - a. Work Zone Signs.
 - b. Barriers.
 - c. Dust control.
 - d. Erosion and sediment control.
 - e. Noise control.
 - f. Pollution control.
- B. Related Sections:
 - 1 Section 32 01 18 – Pavement Repairs.
 - 2 Section 32 11 23 – Aggregate Base Course.
 - 3 Section 32 12 16 - Asphalt Paving.
 - 4 Section 32 13 13 – Concrete Paving.
 - 5 Section 32 92 19 - Seeding and Mulching.

1.2 TEMPORARY SANITARY FACILITIES

- A. Provide and maintain required facilities and enclosures. Provide facilities at time of project mobilization.

1.3 PUBLIC ADVISORY

- A. Prior to the prosecution of work, the Contractor shall provide a advance written notice of seven (7) calendar days to all individuals, homeowners, business owners, utilities, and others along the line of construction who may be affected by any aspect of the work that is contemplated.

SECTION: 01 50 00 - TEMPORARY FACILITIES AND CONTROLS

Such notice may be delivered by door contact, door knob hanger, or letter and shall briefly describe the nature and estimated timetable of the work and shall provide any additional information or instructions that may be desirable or necessary. The notice shall also include the name and telephone number of the contact person for further information related to the project and state that any vehicle that is not removed from the construction area within the ten-day time frame will be towed away by the Contractor or the City of Durham. A proposed draft of the written notice shall be submitted by the Contractor to the Engineer for his approval prior to the initiation on any work.

1.4 TOWING VEHICLES IN WORK ZONE

- A. Any vehicle that has not been removed from the area of construction within the ten-day time limit as stated in the Public Advisory Notice may be towed away. The cost of this towing shall be paid for under miscellaneous cost for the actual cost of the towing. The invoices from the towing company shall be submitted for payment.

1.5 PROGRESS CLEANING AND WASTE REMOVAL

- A. Maintain areas free of waste materials, debris, and rubbish. Maintain site in clean and orderly condition.
- B. Collect and remove waste materials, debris, and rubbish from site daily and dispose off-site.

1.6 TRAFFIC REGULATION

- A. All work related to traffic control and maintenance of traffic shall be incidental to the project.
- B. Properly ballasted cones may be used instead of drums for lane closures during daylight hours. The stationary work zone shall be a maximum of 3 miles in length at any given time unless otherwise directed by the Arborist.
- C. Flag Persons: Provide trained and equipped flag persons to regulate traffic when construction operations or traffic encroach on public traffic lanes.

D. When personnel and/or equipment are working within a lane of travel of an undivided or divided facility, close the lane according to the traffic control plans, roadway standard drawings or as directed by the Arborist. Conduct the work so that all personnel and/or equipment remain within the closed travel lane. Do not work simultaneously, on both sides of an open travel way, within the same location, on a two-lane, two-way road.

E. Signs, Signals, And Devices:

- 1 Post Mounted and Wall Mounted Traffic Control and Informational Signs: As approved by the City.
- 2 Automatic Traffic Control Signals: As approved by the City.
- 3 Traffic Cones and Drums, Flares and Lights: As approved by the City.
- 4 Flagperson Equipment: As required by the City.

K. Flares and Lights: Use flares and lights during hours of low visibility to delineate traffic lanes and to guide traffic.

L. Traffic Signs And Signals:

1. Provide signs at approaches to site and on site, at crossroads, detours, parking areas, and elsewhere as needed to direct construction and affected public traffic.
2. Relocate as Work progresses, to maintain effective traffic control.

M. Removal:

1. Remove equipment and devices when no longer required at substantial completion.
2. Repair damage caused by installation.
3. Remove post settings to depth of 2 feet.

1.7 WORK ZONE SIGNS

A. All work related to signage and maintenance of signage shall be incidental to the project.

B. Rigid sign retro reflective sheeting requirements for Types VII, VIII and IX (prismatic) fluorescent are described in Tables 1089-A, 1089-B and 1089-C. Cover the entire sign face of the sign substrate with NCDOT approved Type VII, VIII or IX (prismatic) fluorescent orange reflective sheeting. Apply the reflective sheeting in a workmanlike manner so that there are no bubbles or wrinkles in the material.

SECTION: 01 50 00 - TEMPORARY FACILITIES AND CONTROLS

- C. Work Zones Signs (Stationary) - Use Type VII, VIII or IX (prismatic) fluorescent orange retro reflective sheeting that meets the following reflective requirements in Tables 1089A, 1089-B or 1089-C respectively. Use approved composite or aluminum for sign backing. Signs and sign supports must meet or exceed NCHRP 350 requirements for Breakaway Devices.
- D. Work Zones Signs (Barricade Mounted) - Use approved composite or roll-up signs for barricade mounted sign substrates. Approved composite barricade mounted warning signs (black on orange) must be Type VII, VIII or IX sheeting which meet the retro reflective requirements of Table 1089-A, 1089-B or 1089-C. Roll-up mounted barricade warning signs (black on orange) must meet the retro reflective requirements in Table 1089-D. Sign and barricade assembly must meet or exceed the requirements of NCHRP 350 for Work Zone Category II Devices.
- E. Work Zones Signs (Portable) - Use approved composite or roll-up sign substrates on portable sign stands.
- 1 Composite - Use Type VII, VIII or IX (prismatic) fluorescent orange retro reflective sheeting that meets the following reflective requirements in Tables 1089-A, 1089-B or 1089-C. Signs and sign supports must meet or exceed NCHRP 350 requirements for Breakaway Devices.
 - 2 Roll-up Signs - Use fluorescent orange retro reflective roll-up signs that meet the following reflective requirements:
 - a. Use roll up signs that have a minimum 3/16" x 1 1/4" horizontal rib and 3/8" x 1 1/4" vertical rib and has been crash test to meet NCHRP 350 requirements and Traffic Control qualified by the Work Zone Traffic Control Unit.

1.8 BARRIERS

- A. Protect non-owned vehicular traffic, stored materials, site, and structures from damage.
- B. Provide a temporary barrier around stumps while grinding is taking place to minimize potential for damage to passing vehicles from thrown debris

1.9 DUST CONTROL

- A. Execute Work by methods to minimize raising dust from construction operations.

SECTION: 01 50 00 - TEMPORARY FACILITIES AND CONTROLS

- B. Provide positive means to prevent air-borne dust from dispersing into atmosphere.

1.10 EROSION AND SEDIMENT CONTROL

- A. Plan and execute construction by methods to control surface drainage from cuts and fills, from borrow and waste disposal areas. Prevent erosion and sedimentation.
- B. Minimize surface area of bare soil exposed at one time.
- C. Construct fill and waste areas by selective placement to avoid erosive surface silts or clays

1.11 NOISE CONTROL

- A. Provide methods, means, and facilities to minimize noise produced by construction operations.

1.12 POLLUTION CONTROL

- A. Provide methods, means, and facilities to prevent contamination of soil, water, and atmosphere from discharge of noxious, toxic substances, and pollutants produced by construction operations.
- B. Comply with pollution and environmental control requirements of the City of Durham and the NC Department of Environment and Natural Resources.

END OF SECTION

SECTION 01 60 00

PRODUCT REQUIREMENTS

1.1 SUMMARY

A. Section Includes:

1. Products.
2. Product delivery requirements.
3. Product storage and handling requirements.
4. Product options.
5. Product substitution procedures.

B. Related Sections:

- 1 Section 01 20 00 – Price and Payment Procedures.
- 2 Section 01 33 00 - Submittal Procedures.
- 3 Section 01 40 00 - Quality Requirements.

1.2 PRODUCTS

- A. Materials, equipment and products incorporated in the Work must be approved for use before being purchased by the Contractor. The Contractor shall submit to the Arborist a list of the proposed materials, together with such samples as may be necessary as stipulated in the specifications. No request for payment will be approved until this list is received and approved by the Arborist.

1.PRODUCT DELIVERY REQUIREMENTS

- A. Branches shall be tied with rope or twine only, and in such a manner that no damage will occur to the bark or branches.
- B. During transportation of plant material, the contractor shall exercise care to prevent injury and drying out of the trees. Should the roots be dried out, large branches broken, balls of earth broken or loosened, or areas of bark torn, the landscape architect may reject the injured tree(s) and order them replaced at no additional cost to the owner. All loads of plants shall be covered at all times with tarpaulin or canvas. Loads that are not protected will be rejected.
- C. Promptly inspect received shipments to ensure products comply with requirements, quantities are correct, and products are undamaged.
- D. Provide equipment and personnel to handle products by methods to prevent exposure, or damage.

SECTION: 01 60 00 - PRODUCT REQUIREMENTS

1.4 PRODUCT STORAGE AND HANDLING REQUIREMENTS

- A. Plants must be protected at all times from sun or drying winds. Those that cannot be planted immediately on delivery shall be kept in the shade, well protected with soil, wet mulch, or other acceptable material, and kept well watered. Plants shall not remain unplanted any longer than ten (10) days after delivery. Plants shall not be bound with wire or rope at any time so as to damage the bark or break branches. Plants shall be lifted and handled with suitable support of the soil ball to avoid damaging it.
- B. Provide bonded, off-site storage and protection when site does not permit on-site storage or protection.
- C. Store loose granular materials on solid flat surfaces in well-drained area. Prevent mixing with foreign matter.
- D. Provide equipment and personnel to store products by methods to prevent damage.
- E. Arrange storage of products to permit access for inspection. Periodically inspect to verify products are undamaged and are maintained in acceptable condition.

1.5 PRODUCT OPTIONS

- A. Products Specified by Reference Standards or by Description Only: Any product meeting those standards or description.
- B. Products Specified by Naming One or More Manufacturers: Products of one of manufacturers named and meeting specifications, no options or substitutions allowed.
- C. Products Specified by Naming One or More Manufacturers with Provision for Substitutions: Submit request for substitution for any manufacturer not named in accordance with the following article.

1.6 PRODUCT SUBSTITUTION PROCEDURES

- A. Arborist will consider requests for Substitutions only within 10 days after date established in Notice to Proceed.
- B. Substitutions may be considered when a product becomes unavailable through no fault of Contractor.
- C. Document each request with complete data substantiating compliance of proposed Substitution with Contract Documents.

SECTION: 01 60 00 - PRODUCT REQUIREMENTS

D. A request constitutes a representation that Contractor:

- 1 Has investigated proposed product and determined that it meets or exceeds quality level of specified product.
- 2 Will provide same warranty for Substitution as for specified product.
- 3 Will coordinate installation and make changes to other Work which may be required for the Work to be complete with no additional cost to Owner.
- 4 Waives claims for additional costs or time extension which may subsequently become apparent.
- 5 Will reimburse Owner and Arborist for review or redesign services associated with re-approval by authorities having jurisdiction.

E. Substitution Submittal Procedure:

- 1 Submit three copies of request for Substitution for consideration. Limit each request to one proposed Substitution.
- 2 Submit Digital Photos, product description, and/or 3rd party testimony attesting to proposed product equivalence. Burden of proof is on proposer.
- 3 Arborist will notify Contractor in writing of decision to accept or reject request.
- 4 Delay caused by obtaining approvals for substitute materials will not be considered justifiable grounds for an extension of construction time.

END OF SECTION

SECTION: 01 60 00 - PRODUCT REQUIREMENTS

SECTION 01 70 00

EXECUTION AND CLOSEOUT REQUIREMENTS

1.1 SUMMARY

A. Section Includes:

1. Closeout procedures.
2. Final cleaning.
3. Protecting installed construction.
4. Project record documents.
5. Warranties and Maintenance

B. Related Sections:

- 1 Section 01 20 00 – Price and Payment Procedures.
- 2 Section 01 33 00 - Submittal Procedures.
- 3 Section 01 40 00 - Quality Requirements.
- 4 Section 01 60 00 - Product Requirements.

1.2 CLOSEOUT PROCEDURES

- A. Submit written certification that Contract Documents have been reviewed, Work has been inspected, and that Work is complete in accordance with Contract Documents and ready for Arborist's review.
- B. Provide submittals to Arborist required by authorities having jurisdiction.
- C. Submit final Application for Payment identifying total adjusted Contract Sum, previous payments, and sum remaining due.

1.3 FINAL CLEANING

- A. Execute final cleaning prior to final project assessment.
- B. Clean site; sweep paved areas, rake clean landscaped surfaces.
- C. Remove waste and surplus materials, rubbish, and construction facilities from site.

1.4 PROTECTING INSTALLED CONSTRUCTION

- A. Protect installed Work and provide special protection where specified in individual specification sections.

SECTION: 01 70 00 - EXECUTION AND CLOSEOUT REQUIREMENTS

B. Leave temporary and removable protection (trunk wrap and/or stakes) in place until acceptance. Control activity in immediate work area to prevent damage.

C. Prohibit traffic in mulched areas.

1.5 PROJECT RECORD DOCUMENTS

A. Maintain on site one set of the following record documents; record actual revisions to the Work:

1. Maps, Specifications, Addenda.
2. Change Orders and other modifications to the Contract.
3. Reviewed Digital Photos, Product Data, and Samples.
4. Nursery's instruction for installation, and any product information for manufactured items.

B. Ensure entries are complete and accurate, enabling future reference by Owner.

C. Store record documents separate from documents used for construction.

D. Record information concurrent with construction progress, not less than weekly.

E. Specifications: Legibly mark and record at each product section description of actual products installed, including the following:

- 1 Manufacturer's name and product model and number.
- 2 Product substitutions or alternates utilized.
- 3 Changes made by Addenda and modifications.
- 4 Nursery of origin, species and size for all trees

1.8 WARRANTIES AND MAINTENANCE

A. A The Contractor shall warrant that all plants planted under this Contract will be healthy and in a vigorous, thriving condition for 12 months from date of Final Acceptance The Contractor shall replace, without cost to the City, all dead plants and/or all plants not in a vigorous, thriving condition, as determined by the City's Representative during and at the end of the Warranty Period. Replacements shall closely match adjacent specimens of the same species and shall be subject to all requirements of the specification.

1. Verify documents are in proper form, contain full information, and are notarized.
2. Include Table of Contents and assemble in three D side ring binder with durable plastic cloth cover and submit prior to final Application for Payment.

SECTION: 01 70 00 - EXECUTION AND CLOSEOUT REQUIREMENTS

- B. The Arborist will notify the Contractor in writing of plants to be replaced. Replacement dates shall be established by mutual agreement between the City's Representative and the Contractor.
- C. Contractor shall maintain plant materials as specified in Section 02970 during the construction period prior to final acceptance.
- D. Applications of herbicides, insecticides and other chemicals shall be applied under the direction of a person licensed by the State of North Carolina to apply such chemicals. The License of the Applicator shall be in good standing and valid. A copy of the Applicator's License or License Number shall be presented to the City at the time the contract is executed. The Contractor guarantees that any of the used chemicals will not permanently damage or harm desirable plants. If permanent damage does occur, the contractor shall take full responsibility for this damage.
- E. The Contractor shall be responsible for providing water to all plant material until the final acceptance of the project.
- F. In the event of infestation by damaging pest during the installation/warranty period, suitable pesticides may be applied according to label and restrictions and subject to the approval of the Arborist.

END OF SECTION

SECTION: 01 70 00 - EXECUTION AND CLOSEOUT REQUIREMENTS

SECTION 32 01 17

STUMP GRINDING

PART 1 GENERAL

1.1 SUMMARY

A. Section Includes

1. Description.
2. Unit price
3. Grinding Hardwood Stumps.

B. Related Sections:

- 1 Section 01 20 00 – Price and Payment Procedures.
- 2 Section 01 33 00 - Submittal Procedures.
- 3 Section 01 40 00 - Quality Requirements.
- 4 Section 01 60 00 - Product Requirements.
- 5 Section 01 70 00 – Execution and Closeout Requirements.

1.2 DESCRIPTION

- A. Section includes grinding hardwood tree stumps at locations, widths, and depths as directed by the Arborist, loading, hauling, and disposing of excess material at an approved site, and cleaning adjacent road and sidewalk surface of dust and debris while protecting adjacent vehicles, pedestrians and property from damage from thrown debris.

1.3 UNIT PRICE - MEASUREMENT AND PAYMENT

A. Grinding hardwood Tree Stumps:

1. Basis of Measurement: Where stumps are indicated by Arborist, they are to be ground completely out to circular area of 6' diameter and 24" of depth. If curb, sidewalk, or underground facility exists which prohibits this full area from being ground, Arborist must be notified for approval of modification.
2. Basis of Payment: The number of areas ground to the appropriate depth and area as indicated by the contract documents will be paid under the appropriate bid item and an individual stump unit.
 - a. If the grinding depth and area varies from the required depth and area and was not approved by the Arborist, it will not be accepted for payment.
 - b. If the Arborist directs the Contractor to make multiple passes to achieve the final depth and area, no additional cost will be applied.

SECTION: 32 01 17 – STUMP GRINDING

PART 2 EXECUTION

2.1 GRINDING HARDWOOD STUMPS

- A. The contractor shall contact the local utility companies for verification of the location of all underground utility lines in the area of the work. The contractor shall be responsible for all damage resulting from neglect or failure to comply with this requirement.
- B. The locations and depths for Stump Grinding will be determined by the Arborist at least two (2) weeks prior to the Contractor starting to work.
- C. The grinding operation, equipment, and protection requirements shall be performed as outlined as follows:

The Contractor shall grind selected stumps to a minimum depth of 24” below adjacent ground level, using equipment designed specifically to do so. The Contractor shall conduct his operation in such a manner to prevent injury to trees, shrubs, grass or legume ground cover, or other types of vegetation that is to remain alive and growing. The Contractor shall conduct his operations in such a manner so as to prevent damage to any adjacent property.

Selected stumps include the selected trees that have been removed specifically in advance of as this contract.

The quantity paid for "Stump Grinding" will be based upon the bid price submitted and approved

- D. The stump shavings produced in this operation will be reduced to a mound no greater than 6” above the surrounding grade. If they occupy a Tree Planting Site, they must be amended per specifications to qualify as amended planting soil or replaced entirely with soil deemed suitable by the Arborist.

END OF SECTION

SECTION: 32 01 17 - STUMP GRINDING

SECTION 32 11 23

SITE PREPARATION

PART 1 GENERAL

1.1 SUMMARY

- A. Section Includes:
 - 1 Testing existing soil conditions.
 - 2 Soil amendment guidelines
 - 3 Site prep excavation and soil mixing
- B. Related Sections:
 - 1 Section 01 20 00 – Price and Payment Procedures.
 - 2 Section 01 33 00 - Submittal Procedures.
 - 3 Section 01 40 00 - Quality Requirements.
 - 4 Section 01 60 00 - Product Requirements.
 - 5 Section 01 70 00 – Execution and Closeout Requirements.

1.2 UNIT PRICE - MEASUREMENT AND PAYMENT

- A. Testing Existing Soil
 - 1 Basis of Measurement: By individual planting site, 2 samples minimum, one representing soil conditions in top 1' of soil and second representing conditions below 18" depth.
 - 2 Basis of Payment: Includes obtaining samples, packaging, labeling, and delivering samples to testing facility, retrieving and interpreting data and delivering amendment schedule based upon site and species to be located therein.
- B. Preparing planting sites:
 - 1. Basis of Measurement: By Square Yard, 2' of depth.
 - 2. Basis of Payment: Includes but not limited to removing and disposing of trash, debris or contaminated soil and supplying amendment materials, stockpiling, hauling, placing, tilling, and preparing sites to receive amendments as needed to satisfy requirements of planting site specifications
- C. Bulk soil amendment and aggregate:
 - 1. Basis of Measurement: By cubic yard or ton.
 - 2. Basis of Payment: Includes supplying materials, stockpiling, hauling, applying, mixing, and incorporating.

SECTION: 32 11 23 - SITE PREPARATION

- D Fertilizer:
 - 1. Basis of Measurement: By pound applied.
 - 2. Basis of Payment: Includes supplying materials, stockpiling, hauling, applying, mixing, and incorporating

1.3 REFERENCES

- A. *American National Standards for Tree Care Operations, ANSI A300.* American National Standards Institute, 11 West 42nd Street, New York, N.Y. 10036.
- B. *American Standard for Nursery Stock, ANSI Z60.1.* American Nursery and Landscape Association, 1250 Eye Street. NW, Suite 500, Washington, D.C. 20005.
- C. *Hortus Third*, The Staff of the L.H. Bailey Hortorium. 1976. MacMillan Publishing Co., New York.
- D. All standards shall include the latest additions and amendments as of the date of advertisement for bids

1.4 SUBMITTALS

- A. Samples: Submit samples of all amended soil mixes, mulches, aggregates and organic materials. Samples shall weigh 1 kg (2 lb) and be packaged in plastic bags. Samples shall be typical of the lot of material to be delivered to the site and provide an accurate indication of color, texture, and organic makeup of the material.
- B. Soil Test: Submit soil test analysis report for each sample existing site soil and amended soil mix from a soil testing laboratory approved by Arborist.

SECTION: 32 11 23 - SITE PREPARATION

1. Provide a particle size analysis, including the following gradient of mineral content:

<u>USDA Designation</u>	<u>Size in mm</u>
Gravel	+2 mm
Very coarse sand	1-2 mm
Coarse sand	0.5 -1 mm
Medium sand	0.25-0.5 mm
Fine sand	0.1-0.25 mm
Very fine sand	0.05-0.1 mm
Silt	0.002-0.05 mm
Clay	smaller than 0.002 mm

2. Provide a chemical analysis, including the following:

- a. pH and buffer pH
- b. Percentage of organic content by oven-dried weight.
- c. Nutrient levels by parts per million, including phosphorus, potassium magnesium, manganese, iron, zinc, and calcium. Nutrient test shall include the testing laboratory recommendations for supplemental additions to the soil based on the requirements of horticultural plants.
- d. Soluble salt by electrical conductivity of a 1:2, soil: water, sample measured in millimho per cm.
- e. Cation exchange capacity (CEC).

C. Material Testing: Submit the manufacturers particle size analysis, and the pH analysis and provide a description and source location for the content material of all organic materials.

1.5 QUALITY ASSURANCE

A. Existing site soil

1. Existing site soil may mixed with amendments to establish the amended soil mix if it is approved by the Arborist. Provide a soil test report along with a site-specific amendment prescription for each individual planting site.

2. Following the completion of the soil testing, the contractor and the Arborist shall meet at the site prior to beginning of site prep activities and establish the proportion of the native soil may be incorporated into the amended mix..

3. Soil stockpiles shall be protected from erosion and contamination.

4. Excess or unused soil will be disposed of properly.

5. Amendments required to be added as indicated on the soil test report shall be added by the contractor at the time of site prep and not left on site overnight.

B. Amended Soil

1. Mixture of existing or imported topsoil, expanded slate aggregate, and pine bark, mixed to the following proportion:

<u>Component</u>	<u>% by volume</u>
Pine bark	10% - 12%
expanded slate aggregate	In quantities as necessary to
loam topsoil	achieve the particle
	distribution criteria

Approximate Finished Planting Mix Particle

Distribution

Gravel	Less than 10%
Course to medium sand	55-65%
Fine to very fine sand	15-25%
Silt	10-20%
Clay	15-20%

2. Planting mix shall be thoroughly mixed, screened, and shredded.

3. Clay loam topsoil shall meet all the requirements of imported topsoil, except the particle size distribution shall meet the USDA classification for clay loam.

4. Prior to beginning the mixing process, submit a 1-kg (2-lb) representative sample of the proposed mix with soil test results that indicate the mix ratio and the results achieved.

SECTION: 32 11 23 - SITE PREPARATION

5. Make all amendments of lime/sulfur and fertilizer indicated by the soil test results at the time of mixing.
6. All mixing shall take place on site at the time that the planting beds are being prepared.
7. Protect the planting mix from erosion prior to installation.

PART 2 PRODUCTS

2.1 Soil amendments

- A. Pine Bark: *(NOTE: Pine bark is high in lignin and is a superior organic amendment to regular compost.)*
Horticultural-grade milled pine bark, with 80 percent of the material by volume sized between 0.1 and 15.0 mm.
 1. Pine bark shall be aged sufficiently to break down all woody material. Pine bark shall be screened.
 2. pH shall range between 4 and 7.0.
 3. Submit manufacturer literature for approval.
- B. Expanded slate aggregate: Stalite rotary kiln expanded slate or equivalent, ASTM C-330, 3/8 #8 Structural Aggregate.
- C. Lime: shall be ground, palletized, or pulverized lime manufactured to meet agricultural standards and contain a maximum of 60 percent oxide (i.e. calcium oxide plus magnesium oxide). Submit manufacturer literature for approval.
- D. Sulfur: shall be flowers of sulfur, pelletized or granular sulfur, or iron sulfate. Submit manufacturer literature for approval.
- E. Fertilizer: Agricultural fertilizer of a formula indicated by the soil test. Fertilizers shall be organic, slow-release compositions whenever applicable. Submit manufacturer literature for approval.

F. Imported Topsoil

1. The equivalent of loamy, friable soil, containing a minimum of 1.5 percent by dry weight organic matter; free from subsoil, refuse, roots, heavy or stiff clay, stones larger than 25 mm (1 in.), noxious seeds, sticks, brush, litter, and other deleterious substances; suitable for the germination of seeds and the support of vegetative growth. The pH value shall be between 5.5 and 6.5.
2. Soil Texture: the equivalent of loam soil with the following particle size distribution.

Approximate Particle Distribution Imported Topsoil

Gravel	Less than 10%
Coarse to medium sand	30-65%
Fine sand	5-20%
Very fine sand	0-20%
Silt	15-25%
Clay	15-25%

PART 3: EXECUTION

- 3.1 Utility location. The contractor shall contact the local utility companies for verification of the location of all underground utility lines in the area of the work. The contractor shall be responsible for all damage resulting from neglect or failure to comply with this requirement.
- 3.2 Tilling and amending planting sites prior to installation
 - A. Protect adjacent walls, walks, and utilities from damage or staining by the soil. Use 12-mm (1/2 in.) plywood and/or plastic sheeting as directed to cover existing concrete, metal, masonry work, and other items as directed during the progress of the work.
 1. Clean up any soil or dirt spilled on any paved surface at the end of each working day.
 2. Any damage to the paving or architectural work caused by the contractor or subcontractor shall be repaired at no additional expense.

- B. Excavate full 6' x 2' planting hole, reserving or disposing of soil or stump shavings per Arborist's recommendations.
 - 1. Detrimental soil conditions: The Arborist is to be notified, in writing, of soil conditions encountered, including poor drainage, that the contractor considers detrimental to the growth of plant material. When detrimental conditions are uncovered, planting shall be discontinued until instructions to resolve the conditions are received from the Arborist.
 - 2. Obstructions: If rock, underground construction work, utilities, tree roots, or other obstructions are encountered in the excavation of planting areas, remedies to the situation, up to and including alternate locations for any planting shall be determined by the Arborist.
- C. Stage planting mix ingredients adjacent to planting hole on plastic tarp, plywood, or tractor bucket, truck bed or trailer.
- D. Till the subsoil into the bottom layer of topsoil or planting mix.
 - 1. Loosen the soil of the subgrade to a depth of 50 to 75 mm (2 to 3 in.) with a rototiller or other suitable device.
 - 2. Spread a layer of the specified topsoil or planting mix 50 mm (2 in.) deep over the subgrade. Thoroughly till the planting mix and the subgrade together.
 - 3. Immediately install the remaining topsoil or planting mix in accordance with the following specifications. Protect the tilled area from traffic. **DO NOT** allow the tilled subgrade to become compacted.
 - 4. In the event that the tilled area becomes compacted, till the area again prior to installing the planting mix.
- E. Install the remaining amended soil / planting mix in 200- to 250-mm (8- to 10-in.) lifts to the depths and grades shown on the drawing. **The depths and grades shown on the drawings are the final grades after soil settlement and shrinkage of the organic material. The contractor shall install the soil at a higher level to anticipate this reduction of soil volume, depending on predicted settling properties for each type of soil.**

1. Phase the installation of the soil such that equipment does not have to travel over already-installed topsoil or planting mixes.
2. Compact each lift sufficiently to reduce settling but not enough to prevent the movement of water and feeder roots through the soil. The soil in each lift should feel firm to the foot in all areas and make only slight heel prints.
3. Maintain moisture conditions within the soils during installation to allow for satisfactory compaction. Suspend installation operations if the soil becomes wet. Do not place soils on wet or frozen subgrade.
4. Provide adequate equipment to achieve consistent and uniform compaction of the soils. Use the smallest equipment that can reasonably perform the task of spreading and compaction.
5. Add lime, sulfur, fertilizer, and other amendments during soil installation. Spread the amendments over the top layer of soil and till into the top 100 mm (4 in.) of soil. Soil amendments may be added at the same time that organic matter, when required, is added to the top layer of soil.
6. Protect soil from over-compaction after placement. An area that becomes over-compacted shall be tilled to a depth of 125 mm (6 in.). Uneven or settled areas shall be filled and re-graded.

END OF SECTION

SECTION: 32 12 16

TREE INSTALLATION

PART 1 GENERAL

1.1 SUMMARY

A. Section Includes:

1. Unit Price, Measurement and Payment
2. References
3. Qualifications
4. Quality control and quality assurance.
5. Execution

B. Related Sections:

1. Section 01 20 00 – Price and Payment Procedures.
2. Section 01 33 00 - Submittal Procedures.
3. Section 01 40 00 - Quality Requirements.
4. Section 01 60 00 - Product Requirements.
5. Section 01 70 00 – Execution and Closeout Requirements.

1.2 UNIT PRICE - MEASUREMENT AND PAYMENT

A Tree Installation

1. Basis of Measurement: Per individual site/tree.
2. Basis of Payment: Includes receiving tree shipment, temporary storage, transport to site, handling, excavation of planting hole, placement of tree within hole, removal of basket and burlap, backfilling, compaction and watering.

B. Pre emergent herbicide application

1. Basis of Measurement: per site, 6' radius minimum
2. Basis of Payment: Includes purchase, lawful storage and handling, site delivery and lawful application by licensed pesticide applicator

C. Mulch application

1. Basis of Measurement: cubic yard.
2. Basis of Payment: Includes purchase, temporary storage, site delivery and application per standards entailed herein

1.2 REFERENCES

- 2 *American National Standards for Tree Care Operations, ANSI A300.* American National Standards Institute, 11 West 42nd Street, New York, N.Y. 10036.
- 3 *American Standard for Nursery Stock, ANSI Z60.1.* American Nursery and Landscape Association, 1250 Eye Street. NW, Suite 500, Washington, D.C. 20005.
- 4 *Hortus Third*, The Staff of the L.H. Bailey Hortorium. 1976. MacMillan Publishing Co., New York.
- 5 All standards shall include the latest additions and amendments as of the date of advertisement for bids

1.4 SUBMITTALS

- A. Related Sections:
 - A. Section 01 33 00 - Submittal Procedures: Requirements for submittals.
 - B. Product Data: Submit product information and mix design.
- B. An electronic copy of shipment documentation from Nursery of Origin, such as bill of lading shall be submitted to Arborist.

1.5 QUALITY CONTROL AND QUALITY ASSURANCE

- A. Arborist or his representative to conduct final inspection of plant material and hole before installation, again before straps are removed from rootball and finally after final lift of soil is compacted and tree is plumbed.
- B. Arborist or his representative will give Contractor a signed or initialed approval list noting all phases of installation is done to the satisfaction of the City.

1.6 QUALIFICATIONS

- A. Landscape planting and related work shall be performed by a firm with a minimum of five years experience specializing in this type of work. All contractors and their sub-contractors who will be performing any landscape work included in this section of the specification shall be approved by the Arborist

- B. Applications of herbicides, insecticides and other chemicals shall be applied under the direction of a person licensed by the State of North Carolina to apply such chemicals. The License of the Applicator shall be in good standing and valid. A copy of the Applicator's License or License Number shall be presented to the City at the time the contract is executed. The Contractor guarantees that any of the used chemicals will not permanently damage or harm desirable plants. If permanent damage does occur, the contractor shall take full responsibility for this damage.

PART 2 EXECUTION

2.1 Delivery of trees to site from temporary storage and staging at planting site:

- A. Branches shall be tied with rope or twine only, and in such a manner that no damage will occur to the bark or branches.
- B. During transportation of plant material, the contractor shall exercise care to prevent injury and drying out of the trees. Should the roots be dried out, large branches broken, balls of earth broken or loosened, or areas of bark torn, the landscape architect may reject the injured tree(s) and order them replaced at no additional cost to the owner. All loads of plants shall be covered at all times with tarpaulin or canvas. Loads that are not protected will be rejected.
- C. Plants shall not be bound with wire or rope at any time so as to damage the bark or break branches. Plants shall be lifted and handled with suitable support of the soil ball to avoid damaging it.

2.2 Excavation of Planting sites

- A. Locations for plants and/or outlines of areas to be planted are to be staked out at the site. Locate and mark all subsurface utility lines. Approval of the stakeout by the Arborist is required before excavation begins.
- B. Tree sites are to be excavated to the depth and widths indicated on the drawings. If the planting area under any tree is initially dug too deep, the soil added to bring it up to the correct level should be thoroughly tamped.
 - 1. The sides of the excavation of all planting areas shall be sloped at a 45 degrees. The bottom of all beds shall slope parallel to the proposed grades. The bottom of the planting bed under any tree shall be such that the tree sits plumb.

2. Subgrade soils shall be separated from the topsoil, removed from the area, and not used as backfill in any planted area. Excavations shall not be left uncovered or unprotected overnight.
- C. Excavate the hole to the depth of the root ball and to widths shown on the drawing. Slope the sides of the excavation at a 45 degree angle up and away from the bottom of the excavation.
1. In areas of slowly draining soils, the root ball may be set up to 75 mm (3 in.) or 1/8 of the depth of the root ball above the adjacent soil level.
 2. Save the existing soil to be used as backfill around the tree.
 3. Detrimental soil conditions: The Arborist is to be notified, in writing, of soil conditions encountered, including poor drainage, that the contractor considers detrimental to the growth of plant material. When detrimental conditions are uncovered, planting shall be discontinued until instructions to resolve the conditions are received from the Arborist.
 4. Obstructions: If rock, underground construction work, utilities, tree roots, or other obstructions are encountered in the excavation of planting areas, remedies, up to and including alternate locations for any planting, shall be determined by the Arborist.

2.3 Placement of Trees within planting holes

- A. Trees shall be set on flat-tamped or unexcavated pads at the relationship to finished grade noted on the drawings. Plants must be set plumb and braced in position until topsoil or planting mix has been placed and tamped around the base of the root ball. Improper compacting of the soil around the root ball may result in the tree settling or leaning.
- B. Determine the elevation of the root flare and ensure that it is planted at grade. This may require that the tree be set higher than the grade in the nursery.
1. If the root flare is less than 50 mm (2 in.) below the soil level of the root ball, plant at the tree the appropriate level above the grade to set the flare even with the grade and carefully remove excess soil.

- A. Lift plants only from the bottom of the root balls or with belts or lifting harnesses of sufficient width not to damage the root balls. Do not lift trees by their trunk or use the trunk as a lever in positioning or moving the tree in the planting area.
- B. Cut ropes or strings from the top of root balls and after plant has been set. Remove burlap or cloth wrapping and any wire baskets from around top half of balls. Do not turn under and bury portions of burlap at top of ball.

2.4 Back- filling planting hole

- A. Place amended soil / planting mix into the area around the tree, tamping lightly to reduce settlement. Ensure that the amendments are thoroughly mixed into the backfill.
 - 1. Ensure that the backfill immediately around the base of the root ball is tamped with foot pressure sufficient to prevent the root ball from shifting or leaning.
- B. Thoroughly water all plants immediately after planting. Apply water by hose directly to the root ball and the adjacent soil.
- C. Remove all tags, labels, strings, etc. from all plants.
- D. Remove any excess soil, debris, and planting material from the job site at the end of each workday.
- E. Straighten trunks as necessary to achieve a vertical, plumb tree.
- F. Form watering saucers 100 mm (4 in.) high as indicated on the detail.

END OF SECTION

SECTION: 32 12 16 – TREE INSTALLATION

SECTION: 32-92-19

FINAL TREATMENTS

PART 1 GENERAL

1.1 SUMMARY

A. Section Includes:

1. Unit Price, Measurement and Payment
2. References
3. Qualifications
4. Quality control and quality assurance.
5. Execution

B. Related Sections:

1. Section 01 20 00 – Price and Payment Procedures.
2. Section 01 33 00 - Submittal Procedures.
3. Section 01 40 00 - Quality Requirements.
4. Section 01 60 00 - Product Requirements.
5. Section 01 70 00 – Execution and Closeout Requirements.

1.2 UNIT PRICE - MEASUREMENT AND PAYMENT

A. Pre emergent herbicide application

1. Basis of Measurement: per site, 6' radius minimum
2. Basis of Payment: Includes purchase, lawful storage and handling, site delivery and lawful application by licensed pesticide applicator

B. Mulch application

1. Basis of Measurement: cubic yard.
2. Basis of Payment: Includes purchase, temporary storage, site delivery and application per standards entailed herein

C. Watering device installation

1. Basis of Measurement: per tree
2. Basis of Payment: Includes purchase, temporary storage, site delivery, installation and filling per manufacturers specifications.

2.1 Pre-Emergent herbicide treatment

A. Qualifications: Applications of herbicides, insecticides and other chemicals shall be applied under the direction of a person licensed by the State of North Carolina to apply such chemicals. The License of the Applicator shall be in good standing and valid. A copy of the Applicator's License or License Number shall be presented to the City at the time the contract is executed.

SECTION: 32 92 19 - FINAL TREATMENTS

The Contractor guarantees that any of the used chemicals will not permanently damage or harm desirable plants. If permanent damage does occur, the contractor shall take full responsibility for this damage.

B. Specifications: Team-Pro 19-3-6, Lasso, Ronstar or equal shall be applied to 6' diameter tree beds prior to the application of mulch, by the Contractor. Pre-emergent shall be applied at rates specified on the package and only as recommended by the manufacturer.

2.2 Mulching:

A. Mulch: shall be triple-shred hardwood. Material shall be mulching grade, uniform in size, and free of foreign matter. Submit sample for approval.

B. Application: Mulch tree planting beds with required mulching material, 4" deep, as shown on drawings.

2.3 Watering

A. Water is to be delivered to the trees initially within 8 hrs of planting through direct saturation using a truck-mounted tank and pump or gravity based delivery system with a flow-rate that will not cause mulch or soil to wash.

B. Subsequent watering is to be done through the warrantee period using a water delivery device approved by the Arborist. Acceptable devices include but are not limited to TreeGator™ or Ooze Tube™ systems. The devices must be installed on the trees at the close of the contract period to be filled throughout the warrantee period.

C. Water delivery from the date of installation through March 1st 2010 must at minimum be equal to 5 gallons/month. March through November must at minimum be equal to 5 gallons/week. The contractor must provide the Arborist with a proposed watering schedule for the dormant period (through 3/1) as part of the final walkthrough, and a weekly schedule (March- November) no later than 3/1/2010.

D. Rainfall: When rainfall values exceed 1"/week or field visits indicate saturated conditions, the contractor may deviate from the schedule with permission from the Arborist.

END OF SECTION

APPENDIX A

NCDOT GENERAL PROVISIONS



CONTRACT: ER 5100 EA

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REVISION TO FHWA-1273 CONCERNING PERSONAL INFORMATION ON PAYROLL SUBMISSIONS:

(1-20-09) SP1G59

Revise the *Standard Special Provision FHWA-1273 Required Contract Provisions Federal-Aid Construction Contracts* as follows:

Section V, Paragraph 2b is replaced with the following:

The payroll records shall contain the name, and the last four digits of the social security number of each such employee, his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid.

DISADVANTAGED BUSINESS ENTERPRISE (POC AND MUNICIPALITIES):

(10-16-07)(Rev 10-20-09) SP1G62

Policy

It is the policy of the North Carolina Department of Transportation that Disadvantaged Business Enterprises (DBEs) as defined in *49 CFR Part 26* shall have the equal opportunity to compete fairly for and to participate in the performance of contracts financed in whole or in part by Federal Funds.

Obligation

The Contractor, subcontractor, and sub-recipient shall not discriminate on the basis of race, religion, color, national origin, age, disability or sex in the performance of this contract. The Contractor shall comply with applicable requirements of *49 CFR Part 26* in the award and administration of federally assisted contracts. Failure by the Contractor to comply with these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the Department deems necessary.

Definitions

Commitment - The approved DBE participation submitted by the prime contractor during the bidding process.

Committed DBE - Any DBE listed on the DBE commitment list approved by the Department at the time of bid submission or any DBE utilized as a replacement for a DBE firm listed on the commitment list.

Department - North Carolina Department of Transportation *Municipality* - The entity letting the contract, when this provision refers to the Department or DOT, it shall mean municipality, if applicable.

Disadvantaged Business Enterprise (DBE) – A firm certified as a Disadvantage Business Enterprise through the North Carolina Unified Certification Program.

Goal - The DBE participation specified herein

Letter of Intent – Written documentation of the bidder/offeror's commitment to use a DBE subcontractor and confirmation from the DBE that it is participating in the contract.

Manufacturer - A firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.

Regular Dealer - A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. A regular dealer engages in, as its principal business and in its own name, the purchase and sale or lease of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers are not regarded as manufacturers or regular dealers within the meaning of this section.

Form RS-1-D - Form for subcontracts involving DBE subcontractors attesting to the agreed upon unit prices and extensions for the affected contract items.

North Carolina Unified Certification Program - A program that provides comprehensive information to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients of USDOT funds in the state and not limited to the Department of Transportation only. The Certification Program is in accordance with *49 CFR Part 26*.

Standard Specifications – The general term comprising all directions, provisions, and requirements contained or referred to in the *North Carolina Department of Transportation Standard Specifications for Roads and Structures* and any subsequent revisions or additions to such book that are issued under the title *Supplemental Specifications*.

USDOT - United States Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Contract Goal

The following goal for participation by Disadvantaged Business Enterprises is established for this contract:

Disadvantaged Business Enterprises **0 %**

(A) *If the goal is more than zero*, the Contractor shall exercise all necessary and reasonable steps to ensure that Disadvantaged Business Enterprises participate in at least the percent of the contract as set forth above as the goal.

(B) *If the goal is zero*, the Contractor shall continue to recruit the DBEs and report the use of DBEs during the construction of the project. A good faith effort will not be required with a zero goal.

Contract Requirement

The approved DBE participation submitted by the Contractor shall be the **Contract Requirement**.

Certified Transportation Firms Directory

Real-time information about firms doing business with the Department and firms that are certified through North Carolina's Unified Certification Program is available in the Directory of Transportation Firms. The Directory can be accessed by the link on the Department's homepage or by entering <https://apps.dot.state.nc.us/vendor/directory> in the address bar of your web browser. Only firms identified as DBE certified in the Directory can be utilized to meet the contract goals.

The listing of an individual firm in the Department's directory shall not be construed as an endorsement of the firm's capability to perform certain work.

Listing of DBE Subcontractors in Contract

Only those DBE firms with current certification are acceptable for listing in the bidder's submittal of DBE participation. The Contractor shall indicate the following required information:

(A) *If the goal is more than zero* bidders, at the time the bid proposal is submitted, shall submit a listing of DBE participation on the appropriate form (or facsimile thereof) contained elsewhere in the contract documents in order for the bid to be considered responsive. Bidders shall indicate the total dollar value of the DBE participation for the contract. If the bidder has no DBE participation, they shall indicate this on the form "Listing of DBE Subcontractors" by entering the word or number zero. This form shall be completed in its entirety. **Blank forms will not be deemed to represent zero participation**. Bids submitted that do not have DBE participation indicated on the appropriate form will not be read publicly during the opening of bids. The Department will not consider these bids for award and the proposal will be returned to the bidder.

(B) *If the goal is zero*, bidders at the time the bid proposal is submitted, shall enter the word "zero" or number "0" or if there is participation, add the value on the "Listing of DBE Subcontractors" (or facsimile thereof) contained elsewhere in the contract documents.

Written Documentation – Letter of Intent

The bidder shall submit written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal and written confirmation from each DBE, listed in the proposal, indicating their participation in the contract. This documentation shall be submitted on the Department's form titled "Letter of Intent to Perform as a Subcontractor". This letter of intent form is available at:

<http://www.ncdot.org/doh/preconstruct/ps/contracts/letterofintent.pdf>. It shall be received in the office of the (Officer/Engineer) no later than (Time of Day) of the (No. of Days) calendar day following opening of bids.

If the bidder fails to submit the letter of intent from each committed DBE listed in the proposal indicating their participation in the contract, the DBE participation will not count toward meeting the goal.

Counting DBE Participation Toward Meeting DBE Goal of Zero or More

(A) If a firm is determined to be an eligible DBE firm, the total dollar value of the participation by the DBE will be counted toward the contract requirement. The total dollar value of participation by a certified DBE will be based upon the value of work actually performed by the DBE and the actual payments to DBE firms by the Contractor.

(B) When a DBE performs as a participant in a joint venture, the Contractor may count toward its DBE goal a portion of the total value of participation with the DBE in the joint venture, that portion of the total dollar value being a distinct clearly defined portion of work that the DBE performs with its forces.

(C) (1) The Contractor may count toward its DBE requirement only expenditures to DBEs that perform a commercially useful function in the work of a contract. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE shall also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Department (Insert Municipality Name and delete Department, if applicable) will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

(2) A DBE may enter into subcontracts. Work that a DBE subcontracts to another DBE firm may be counted toward the contract requirement. Work that a DBE subcontracts to a non-DBE firm does not count toward the contract requirement. If a DBE contractor or subcontractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of standard industry practices, the DBE shall be presumed not to be performing a commercially useful function. The DBE may present evidence to rebut this presumption to the Department (Insert Municipality Name and delete Department, if applicable) for commercially useful functions. The Department's (Insert Municipality Name and delete Department, if applicable) decision on the rebuttal of this presumption is subject to review by the Federal Highway Administration but is not administratively appealable to USDOT.

(3) The following factors will be used to determine if a DBE trucking firm is performing a commercially useful function.

(a) The DBE shall be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there shall not be a contrived

arrangement for the purpose of meeting DBE goals.

(b) The DBE shall itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

(c) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

(d) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

(e) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.

(f) For purposes of this paragraph, a lease shall indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks shall display the name and identification number of the DBE.

(D) A contractor may count toward its DBE requirement 60 percent of its expenditures for materials and supplies required to complete the contract and obtained from DBE regular dealer and 100 percent of such expenditures to a DBE manufacturer.

(E) A contractor may count toward its DBE requirement the following expenditures to DBE firms that are not manufacturers or regular dealers:

(1) The fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, provided the fees or commissions are determined to be reasonable and not excessive as compared with fees and commissions customarily allowed for similar services.

(2) The fees or commissions charged for assistance in the procurement of the materials and supplies, or for transportation charges for the delivery of materials or supplies required on a job site (but not the cost of the materials and supplies themselves), provided the fees are not from a manufacturer or regular dealer and provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

Good Faith Effort for Projects with Goals More Than Zero

If the DBE participation submitted in the bid by the apparent lowest responsive bidder does not meet or exceed the DBE contract goal, the apparent lowest responsive bidder shall submit to the Department (Officer/Engineer) documentation of its good faith efforts made to reach the contract goal. One complete set and 9 copies of this information shall be received in the office of the (Officer/Engineer) no later than (Time of Day) of the (No. of Days) calendar day following opening of bids. Where the information submitted includes repetitious solicitation letters it will be acceptable to submit a representative letter along with a distribution list of the firms that were solicited. Documentation of DBE quotations shall be a part of the good faith effort submittal as necessary to demonstrate compliance with the factors listed below which the Department (Insert Municipality Name and delete

Department, if applicable) considers in judging good faith efforts. This documentation may include written subcontractor quotations, telephone log notations of verbal quotations, or other types of quotation documentation.

The following factors will be used to determine if the bidder has made adequate good faith effort:

(A) Whether the bidder attended any pre-bid meetings that were scheduled by the Department (Insert Municipality Name and delete Department, if applicable) to inform DBEs of subcontracting opportunities.

(B) Whether the bidder provided solicitations through all reasonable and available means (e.g. advertising in newspapers owned and targeted to the Disadvantaged) at least 10 calendar days prior to bid opening. Whether the bidder provided written notice to all DBEs listed in the NCDOT Directory of Transportation Firms, within the Divisions and surrounding Divisions where the project is located, that specialize in the areas of work (as noted in the DBE Directory) that the bidder will be subletting.

(C) Whether the bidder followed up initial solicitations of interests by contacting DBEs to determine with certainty whether they were interested. If a reasonable amount of DBEs within the targeted Divisions do not provide an intent to quote or no DBEs specialize in the subcontracted areas, the bidder shall notify DBEs outside of the targeted Divisions that specialize in the subcontracted areas, and contact the State Contractor Utilization Engineer in the Contractual Services Unit (Insert Municipality Name and delete Department title, if applicable) to give notification of the bidder's inability to get DBE quotes.

(D) Whether the bidder selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the contract goals. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the bidder might otherwise perform these work items with its own forces.

(E) Whether the bidder provided interested DBEs with adequate and timely information about the plans, specifications and requirements of the contract.

(F) Whether the bidder negotiated in good faith with interested DBEs without rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities. Any rejection should be noted in writing with a description as to why an agreement could not be reached.

(G) Whether quotations were received from interested DBE firms but rejected as unacceptable without sound reasons why the quotations were considered unacceptable. The fact that the DBE firms quotation for the work is not the lowest quotation received will not in itself be considered as a sound reason for rejecting the quotation as unacceptable. The fact that the bidder has the ability and/or desire to perform the contract work with its own forces will not be considered as sound reason for rejecting a DBE quote. Nothing in this provision shall be construed to require the bidder to accept unreasonable quotes in order to satisfy contract goals.

(H) Whether the bidder specifically negotiated with subcontractors to assume part of the responsibility to meet the contract DBE goal when the work to be sublet includes potential for DBE participation.

(I) Whether the bidder made any efforts and/or offered assistance to interested DBEs in obtaining the necessary equipment, supplies, materials, insurance, and/or bonding to satisfy the work requirements in the bid proposal.

(J) Any other evidence that the bidder submits which show that the bidder has made reasonable good faith efforts to meet the contract goal.

If a bidder is the apparent lowest responsive bidder on more than one project within the same letting located in the same geographic area of the state, as a part of the good faith effort the Department (Insert Municipality Name and delete Department, if applicable) will consider allowing the bidder to combine the DBE participation as long as the DBE overall goal value of the combined projects is achieved.

If the Department (Insert Municipality Name and delete Department, if applicable) does not award the contract to the apparent lowest responsive bidder, the Department (Insert Municipality Name and delete Department, if applicable) reserves the right to award the contract to the next lowest responsive bidder that can satisfy the Department (Insert Municipality Name and delete Department, if applicable) that the contract goal can be met or that adequate good faith efforts have been made to meet the goal.

DBE Replacement

The Contractor shall not terminate a committed DBE subcontractor for convenience or perform the work with its own forces or those of an affiliate. If the Contractor fails to demonstrate reasonable efforts to replace a committed DBE firm that does not perform as intended with another committed DBE firm or completes the work with its own forces without the Engineer's (Insert Title and delete Engineer, if applicable) approval, the Contractor may be disqualified from further bidding for a period of up to 6 months.

The Contractor shall comply with the following for replacement of committed DBE.

(A) Performance Related Replacement

When a DBE is terminated or fails to complete its work on the contract for any reason, the Contractor shall take all necessary, reasonable steps to replace the DBE subcontractor with another DBE subcontractor to perform at least the same amount of work as the DBE that was terminated. The Contractor is encouraged to first attempt to find another DBE firm to do the same work as the DBE that was being terminated.

To demonstrate necessary, reasonable good faith efforts, the Contractor shall document the steps they have taken to replace any DBE subcontractor who is unable to perform successfully with another DBE subcontractor. Such documentation shall include but not be limited to the following:

- (1) Copies of written notification to DBEs that their interest is solicited in subcontracting the work defaulted by the previous DBE subcontractor or in subcontracting other items of work in the contract.
- (2) Efforts to negotiate with DBEs for specific subbids including, at a minimum:
 - (a) The names, addresses, and telephone numbers of DBEs who were contacted.
 - (b) A description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed.
- (3) For each DBE contacted but rejected as unqualified, the reasons for the Contractor's conclusion.
- (4) Efforts made to assist the DBEs contacted, if needed, in obtaining bonding or insurance required by the Contractor.

(B) Decertification Replacement

(1) When a committed DBE is decertified by the City of Durham after a Request for Subcontract has been received by the City of Durham, the City of Durham will not require the Prime Contractor to solicit replacement DBE participation equal to the remaining work to be performed by the decertified firm. The participation equal to the remaining work performed by the decertified firm will count toward the contract requirement.

(2) When a committed DBE is decertified prior to the City of Durham receiving a Request for Subcontract for the named DBE firm, the Prime Contractor shall take all necessary and reasonable steps to replace the DBE subcontractor with another DBE subcontractor to perform at least the same amount of work to meet the contract goal or demonstrate that it has made a good faith effort to do so.

Changes in the Work

When the Arborist makes changes that result in the reduction or elimination of work to be performed by a committed DBE, the Contractor will not be required to seek additional participation. When the Arborist makes changes that result in additional work to be performed by a DBE based upon the Contractor's commitment, the DBE shall participate in additional work to the same extent as the DBE participated in the original contract work.

When the Arborist makes changes that result in extra work, which has more than a minimal impact on the contract amount, the Contractor shall seek additional participation by DBEs unless otherwise approved by the Arborist.

When the Arborist makes changes that result in an alteration of plans or details of construction and a portion or all of work had been expected to be performed by a committed DBE, the Contractor shall seek participation by DBEs unless otherwise approved by the Arborist. When the Contractor requests changes in the work that result in the reduction or elimination of work that the Contractor committed to be performed by a DBE, the Contractor shall seek additional participation by DBEs equal to the reduced DBE participation caused by the changes.

Reports

All requests for subcontracts involving DBE subcontractors shall be accompanied by a certification executed by both the Prime Contractor and the DBE subcontractor attesting to the agreed upon unit prices and extensions for the affected contract items. This information shall be submitted on the Department Form RS-1-D, located at: <http://www.ncdot.org/doh/forms/files/FORMRS-1-D.doc> unless otherwise approved by the Engineer (Insert Municipality Name and delete Engineer, if applicable). The Department (Insert Municipality Name and delete Department, if applicable) reserves the right to require copies of actual subcontract agreements involving DBE subcontractors.

Within 30 (Enter No. of Days) calendar days of entering into an agreement with a DBE for materials, supplies or services, not otherwise documented by a Request for Subcontract as specified above, the Contractor shall furnish the Engineer a copy of the agreement. The documentation should also indicate the percentage (60% or 100%) of expenditures claimed for DBE credit.

All certifications will be considered a part of the project records, and consequently will be subject to penalties under Federal Law associated with falsifications of records related to projects.

Reporting Disadvantaged Business Enterprise Participation

(A) The Contractor shall provide the Engineer with an accounting of payments made to

Disadvantaged Business Enterprise firms, including material suppliers, contractors at all levels (prime, subcontractor, or second tier subcontractor). This accounting shall be furnished to the Engineer for any given month by the end of the following month. Failure to submit this information accordingly may result in the following action:

(1) Withholding of money due in the next partial pay estimate; or

(2) Removal of an approved contractor from the prequalified bidders' list or the removal of other entities from the approved subcontractors list. (Municipality may add to, change or delete this section.)

(B) The Contractor shall report the accounting of payments on the Department's DBE Subcontractor Payment Information Form DBE-IS, which is available at:

<http://www.ncdot.org/doh/forms/files/DBE-IS.xls>. This shall be reported to the

(Officer/Engineer).

(C) Contractors reporting transportation services provided by non-DBE lessees shall evaluate the value of services provided during the month of the reporting period only.

Prior to payment of the final estimate, the Contractor shall furnish an accounting of total payment to each DBE. A responsible fiscal officer of the payee contractor, subcontractor, or second tier subcontractor who can attest to the date and amounts of the payments shall certify that the accounting is correct.

While each contractor (prime, subcontractor, 2nd tier subcontractor) is responsible for accurate accounting of payments to DBEs, it shall be the prime contractor's responsibility to report all monthly and final payment information in the correct reporting manner.

Because Federal Funding is being used to fund this project, failure on the part of the Contractor to submit the required information in the time frame specified may result in the disqualification of that contractor and any affiliate companies from further bidding until the required information is submitted.

Because Federal Funding is being used to fund this project, failure on the part of any subcontractor to submit the required information in the time frame specified may result in the disqualification of that contractor and any affiliate companies from working on any Federal or State project until the required information is submitted.

Failure to Meet Contract Requirements

Failure to meet contract requirements in accordance with Article 102-16(J) of the *Standard Specifications* may be cause to disqualify the Contractor.

LIABILITY INSURANCE:

(11-18-08) SP1 G80

Page 1-68, Article 107-16 is amended to include the following as the first, second, third and fourth paragraphs:

The Contractor shall be liable for any losses resulting from a breach of the terms of this contract. The Contractor shall be liable for any losses due to the negligence or willful misconduct of its agents, assigns and employees including any sub-contractors which causes damage to others for which the Department is found liable under the Torts Claims Act, or in the General Courts of Justice, provided the Department provides prompt notice to the Contractor and that the Contractor has an opportunity to defend against such claims. The Contractor shall not be responsible for punitive damages.

The Contractor shall at its sole cost and expense obtain and furnish to the Department an original

standard ACORD form certificate of insurance evidencing commercial general liability with a limit for bodily injury and property damage in the amount of \$5,000,000.00 per occurrence and general aggregate, covering the Contractor from claims or damages for bodily injury, personal injury, or for property damages which may arise from operating under the contract by the employees and agents of the Contractor. The required limit of insurance may be obtained by a single general liability policy or the combination of a general liability and excess liability or umbrella policy. The State of North Carolina shall be named as an additional insured on this commercial general liability policy. The policy may contain the following language as relates to the State as an additional insured: "This insurance with respect to the additional insured applies only to the extent that the additional insured is held liable for your or your agent's acts or omissions arising out of and in the course of operations performed for the additional insured."

The Contractor shall maintain all legally required insurance coverage, including without limitation, worker's compensation and vehicle liability, in the amounts required by law. Providing and maintaining adequate insurance coverage is a material obligation of the contractor and is of the essence of this contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Contractor shall at all times comply with the terms of such insurance policies.

Upon execution of the contract, provide evidence of the above insurance requirements to the Engineer.

CERTIFICATION FOR FEDERAL-AID CONTRACTS:

(3-21-90) SP1 G85

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, *Disclosure Form to Report Lobbying*, in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by *Section 1352, Title 31, U.S. Code*. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

REQUIRED CONTRACT PROVISIONS FOR ARRA:

(3-17-09) (Rev 3-31-09) SP1 G86

Reporting Requirements

The Contractor is hereby notified that this project will be financed with *American Recovery and Reinvestment Act of 2009 (ARRA)* Funds. The Contractor shall assure that all subcontracts, and other contracts for services for an ARRA funded project shall also have these provisions in their contracts. As such the Department may require that the Contractor provide reports and other employment information as evidence to document the number of jobs created and/or sustained by this project for the Contractor's own workforce and any sub-contractors. No direct payment will be made for providing said reports as the cost for same shall be included in the various items in the contract.

Posting with the Local Employment Security Commission

In addition to any other job postings the Contractor normally utilizes, the Contractor shall post with the local Employment Security Commission Office, all positions for which he intends to hire workers as a result of being awarded this contract.

Required Contract Provision to Implement ARRA Section 902

Section 902 of the American Recovery and Reinvestment Act (ARRA) of 2009 requires that each contract awarded using ARRA funds must include a provision that provides the U.S. Comptroller General and his representatives with the authority to:

- (1) to examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and
- (2) to interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

Accordingly, the Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the ARRA with respect to this contract, which is funded with funds made available under the ARRA. Section 902 further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

Authority of the Inspector General

Section 1515(a) of the ARRA provides authority for any representatives of the Inspector General to examine any records or interview any employee or officers working on this contract. The contractor is advised that representatives of the inspector general have the authority to examine any record and interview any employee or officer of the contractor, its subcontractors or other firms working on this contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an inspector general.

U.S. DEPARTMENT OF TRANSPORTATION HOTLINE:

(11-22-94) SP1 G100

To report bid rigging activities call: **1-800-424-9071**

The U.S. Department of Transportation (DOT) operates the above toll-free *hotline* Monday through Friday, 8:00 a.m. to 5:00 p.m. eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the *hotline* to report such activities.

The *hotline* is part of the DOT's continuing effort to identify and investigate highway construction contract fraud and abuse is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

OUTSOURCING OUTSIDE THE USA:

(9-21-04) (5-16-06) SP1 G150

All work on consultant contracts, services contracts, and construction contracts shall be performed in the United States of America. No work shall be outsourced outside of the United States of America.

Outsourcing for the purpose of this provision is defined as the practice of subcontracting labor, work, services, staffing, or personnel to entities located outside of the United States.

The North Carolina Secretary of Transportation shall approve exceptions to this provision in writing.

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APPENDIX B



NCDOT STANDARD SPECIAL PROVISIONS CONTRACT:

ER 5100 EA

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**STANDARD SPECIAL PROVISION AVAILABILITY OF FUNDS – TERMINATION OF
CONTRACTS**

(5-20-08) Z-2

General Statute 143C-6-11. (h) Highway Appropriation is hereby incorporated verbatim in this contract as follows:

(h) Amounts Encumbered. – Transportation project appropriations may be encumbered in the amount of allotments made to the Department of Transportation by the Director for the estimated payments for transportation project contract work to be performed in the appropriation fiscal year. The allotments shall be multiyear allotments and shall be based on estimated revenues and shall be subject to the maximum contract authority contained in *General Statute 143C-6-11(c)*. Payment for transportation project work performed pursuant to contract in any fiscal year other than the current fiscal year is subject to appropriations by the General Assembly. Transportation project contracts shall contain a schedule of estimated completion progress, and any acceleration of this progress shall be subject to the approval of the Department of Transportation provided funds are available. The State reserves the right to terminate or suspend any transportation project contract, and any transportation project contract shall be so terminated or suspended if funds will not be available for payment of the work to be performed during that fiscal year pursuant to the contract. In the event of termination of any contract, the contractor shall be given a written notice of termination at least 60 days before completion of scheduled work for which funds are available. In the event of termination, the contractor shall be paid for the work already performed in accordance with the contract specifications.

Payment will be made on any contract terminated pursuant to the special provision in accordance with Article 108-13(E), of the *North Carolina Department of Transportation Standard Specifications for Roads and Structures*, dated July 1, 2006.

PLANT AND PEST QUARANTINES (Imported Fire Ant, Gypsy Moth, Witchweed, And Other Noxious Weeds)

Within quarantined area

This project may be within a county regulated for plant and/or pests. If the project or any part of the Contractor's operations is located within a quarantined area, thoroughly clean all equipment prior to moving out of the quarantined area. Comply with federal/state regulations by obtaining a certificate or limited permit for any regulated article moving from the quarantined area.

Originating in a quarantined county

Obtain a certificate or limited permit issued by the N.C. Department of Agriculture/United States Department of Agriculture. Have the certificate or limited permit accompany the article when it arrives at the project site.

Contact

Contact the N.C. Department of Agriculture/United States Department of Agriculture at 1-800-206-9333, 919-733-6932, or <http://www.ncagr.com/plantind/> to determine those specific project sites located in the quarantined area or for any regulated article used on this project originating in a quarantined county.

Regulated Articles Include

- 1 Soil, sand, gravel, compost, peat, humus, muck, and decomposed manure, separately or with other articles. This includes movement of articles listed above that may be associated with cut/waste, ditch pulling, and shoulder cutting.
- 2 Plants with roots including grass sod.
- 3 Plant crowns and roots.
- 4 Bulbs, corms, rhizomes, and tubers of ornamental plants.
- 5 Hay, straw, fodder, and plant litter of any kind.
- 6 Clearing and grubbing debris.
- 7 Used agricultural cultivating and harvesting equipment.
- 8 Used earth-moving equipment.
- 9 Any other products, articles, or means of conveyance, of any character, if determined by an inspector to present a hazard of spreading imported fire ant, gypsy moth, witchweed or other noxious weeds.

APPENDIX C



FEDERALLY FUNDED PROJECT PROVISIONS

CONTRACT: ER 5100 EA

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STANDARD SPECIAL PROVISION AWARD OF CONTRACT

(6-28-77) Z-6

“The North Carolina Department of Transportation, in accordance with the provisions of *Title VI of the Civil Rights Act of 1964* (78 Stat. 252) and the Regulations of the Department of Transportation (*49 C.F.R., Part 21*), issued pursuant to such act, hereby notifies all bidders that it will affirmatively insure that the contract entered into pursuant to this advertisement will be awarded to the lowest responsible bidder without discrimination on the ground of race, color, or national origin”.

STANDARD SPECIAL PROVISION MINORITY AND FEMALE EMPLOYMENT

REQUIREMENTS

NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (*EXECUTIVE NUMBER 11246*)

1. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, see as shown on the attached sheet entitled "Employment Goals for Minority and Female participation".

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in *41 CFR Part 60-4* shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in *41 CFR 60-4.3(a)*, and its effort to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project or the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the executive Order and the regulations in *41 CFR Part 60-4*. Compliance with the goals will be measured against the total work hours performed.

2. As used in this Notice and in the contract resulting from this solicitation, the "covered area" is the county or counties shown on the cover sheet of the proposal form and contract.

**EMPLOYMENT GOALS FOR MINORITY
AND FEMALE PARTICIPATION**

Economic Areas

Area 023 29.7%

Bertie County
Camden County
Chowan County
Gates County
Hertford County
Pasquotank County
Perquimans County

Area 024 31.7%

Beaufort County
Carteret County
Craven County
Dare County
Edgecombe County
Green County
Halifax County
Hyde County
Jones County
Lenoir County
Martin County
Nash County
Northampton County
Pamlico County
Pitt County
Tyrrell County
Washington County
Wayne County
Wilson County

Area 025 23.5%

Columbus County
Duplin County
Onslow County
Pender County

Area 026 33.5%

Bladen County
Hoke County
Richmond County
Robeson County
Sampson County
Scotland County

Area 027 24.7%

Chatham County
Franklin County
Granville County
Harnett County
Johnston County
Lee County
Person County
Vance County
Warren County

Area 028 15.5%

Alleghany County
Ashe County
Caswell County
Davie County
Montgomery County
Moore County
Rockingham County
Surry County
Watauga County
Wilkes County

Area 029 15.7%

Alexander County
Anson County
Burke County
Cabarrus County
Caldwell County
Catawba County
Cleveland County
Iredell County
Lincoln County
Polk County
Rowan County
Rutherford County
Stanly County

Area 0480 8.5%

Buncombe County
Madison County

Area 030 6.3%

Avery County
Cherokee County
Clay County
Graham County
Haywood County
Henderson County
Jackson County
McDowell County
Macon County
Mitchell County
Swain County
Transylvania County
Yancey County

SMSA Areas

Area 5720 26.6%

Currituck County

Area 9200 20.7%

Brunswick County

New Hanover County

Area 2560 24.2%

Cumberland County

Area 6640 22.8%

Durham County

Orange County

Wake County

Area 1300 16.2%

Alamance County

Area 3120 16.4%

Davidson County

Forsyth County

Guilford County

Randolph County

Stokes County

Yadkin County

Area 1520 18.3%

Gaston County

Mecklenburg County

Union County

Goals for Female

Participation in Each Trade

(Statewide) 6.9%

STANDARD SPECIAL PROVISION

REQUIRED CONTRACT PROVISIONS FEDERAL - AID CONSTRUCTION CONTRACTS

FHWA - 1273 Electronic Version - March 10, 1994

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
 - 1. Payment of Predetermined Minimum Wage
 - 2. Statements and Payrolls
- VI. Record of Materials, Supplies, and Labor
- VII. Subletting or Assigning the Contract
- VIII. Safety: Accident Prevention
 - 1. False Statements Concerning Highway Project
 - 2. Implementation of Clean Air Act and Federal Water Pollution Control Act
- XI. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion
- XII. Certification Regarding Use of Contract Funds for lobbying

ATTACHMENTS

- A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)

I. GENERAL

- 1 These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendent and to all work performed on the contract by piecework, station work, or by subcontract.
- 2 Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.
- 3 A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.
- 4 A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12: Section I, paragraph 2; Section IV, paragraphs 1, 2, 3, 4, and 7; Section V, paragraphs 1 and 2a through 2g.
- 5 Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.
- 6 **Selection of Labor:** During the performance of this contract, the contractor shall not:
 - a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
 - b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

- 1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:
 - a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.
 - b. The contractor will accept as his operating policy the following statement: "It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."
- 1 **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.
- 2 **Dissemination of Policy:** All members of the contractor's staff who are to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of,

and will implement, the contractor's EEO policy and contractual will be taken as a minimum:

- a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
- b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
- c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.
- d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
- e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

3. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

- a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.
- b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)
- c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

4. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

5. Training and Promotion:

- a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
- b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.
- c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
- d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

6. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

- a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
- b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
- c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.
- d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the

employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

7. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

- a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.
- b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.
- c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

9. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:

- The number of minority and non-minority group members and women employed in each work classification on the project;
 - The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;
 - The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
 - The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.
- b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

- a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.
- b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).
- c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

- b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.
- c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. Classification:

- a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.
- b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:
 - the work to be performed by the additional classification requested is not performed by a classification in the wage determination;
 - the additional classification is utilized in the area by the construction industry;
 - the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 - with respect to helpers, when such a classification prevails in the area in which the work is performed.
- c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. Payment of Fringe Benefits:

- a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.
- b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. Apprentices and Trainees (Programs of U.S. DOL) and Helpers:

a. Apprentices:

- Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.
- The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.
- Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
- In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

- b. Trainees:
- Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.
- The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.
- Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.
- In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- c. Helpers: Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

1. **Apprentices and Trainees (Programs of the U.S. DOT):** Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.
2. **Withholding:** The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
3. **Overtime Requirements:** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.
4. **Violation: Liability for Unpaid Wages; Liquidated Damages:** In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.
5. **Withholding for Unpaid Wages and Liquidated Damages:** The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1 **Compliance with Copeland Regulations (29 CFR 3):** The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2 **Payrolls and Payroll Records:**

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

— that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

— that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

— that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

— e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

— f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

— g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES AND LABOR THIS SECTION DELETED JUNE 4, 2007.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

1 The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

2 The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

3 No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1 In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2 It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3 Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1 That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2 That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3 That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4 That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification - Primary Covered Transactions: (Applicable to all Federal-aid contracts - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
 - d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification -Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous.

A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

1. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

2. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

STANDARD SPECIAL PROVISION

GENERAL DECISION NC20080011 07/24/2009 NC11

Date: July 24, 2009

General Decision Number NC20080011 07/24/2009 Superseded General Decision No.

NC20070011

State: North Carolina

Construction Type: HIGHWAY

COUNTIES:

Alamance	Durham	Orange
Alexander	Forsyth	Randolph
Buncombe	Franklin	Rowan
Burke	Gaston	Stokes
Cabarrus	Guilford	Union
Catawba	Lincoln	Wake
Cumberland	Mecklenburg	Yadkin
Davidson	New Hanover	
Davie	Onslow	

HIGHWAY CONSTRUCTION PROJECTS (does not include tunnels, building structures in rest area projects, railroad construction, and, bascule, suspension and spandrel arch bridges, bridges designed for commercial navigation, and bridges involving marine construction, and other major bridges).

Modification Number	Publication Date
0	02/08/2008
1	07/25/2008
2	07/24/2009

SUNC1990-014 02/12/1990

Rates

Fringes

CARPENTER	7.63
CONCRETE FINISHER	7.52
ELECTRICIAN	10.26
IRONWORKERS (reinforcing)	9.76

Rates

Fringes

LABORER

General	7.25
Asphalt Lay Down Person	7.25
Asphalt Raker	7.25
Form Setter (road)	8.57
Mason (brick, block, stone)	7.44
Pipe Layer	7.25

Power Tool Operator	8.28
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POWER EQUIPMENT OPERATORS

Asphalt Distributor	7.25
Asphalt Paver	7.47
Bulldozer	7.33
Bulldozer (utility)	7.25
Concrete Curb Machine	7.25
Concrete Finishing Machine	7.85
Concrete Paver	7.25
Crane, Backhoe, Shovel & Dragline (over 1 yd)	8.16
Crane, Backhoe, Shovel & Dragline(1 yd and under)	7.25
Drill Operator	7.34
Grade Checker	7.25
Gradeall	8.38
Grease Person	7.25
Loader	7.25
Mechanic	8.47
Motor Grader (Fine Grade)	8.04
Motor Grader(Rough Grade)	7.68
Oiler	7.25
Roller (Finisher)	7.25
Roller (Rough)	7.25
Scraper	7.25
Screed Asphalt	7.25
Stone Spreader	7.25
Stripping Machine Operator	7.25
Subgrade Machine	7.25
Sweeper	7.25

Rates

Fringes

Tractor (Utility)	7.25
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TRUCK DRIVERS

Trucks – Single Rear Axle	7.25
Trucks – Multi Rear Axle	7.25
Trucks – Heavy Duty	9.47

WELDERS – Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

In the listing above, the "SU" designation means that rates listed under that identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

1. an existing published wage determination
2. a survey underlying a wage determination
3. a Wage and Hour Division letter setting forth a position on a wage determination matter
4. a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations Wage and Hour Division
U. S. Department of Labor 200 Constitution Avenue, N.W. Washington, D.C. 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor 200 Constitution Avenue, N.W. Washington, D.C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U. S. Department of Labor 200 Constitution Avenue, N.W. Washington, D.C. 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

APPENDIX D



FEDERALLY FUNDED PROJECT FORMS CONTRACT:

ER 5100 EA

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Contract Number C _____ County (ies) _____

LISTING OF DBE SUBCONTRACTORS				Sheet _____ of _____	
FIRM NAME AND ADDRESS	MBE or WBE	ITEM NO.	ITEM DESCRIPTION	* AGREED UPON UNIT PRICE	** DOLLAR VOLUME OF ITEM

_____ County _____ Firm _____

This form must be completed in order for the Bid to be considered responsive and be publicly read. Bidders with no DBE participation must so indicate this on the form by entering the word or number *zero*.

* The Dollar Volume shown in this column shall be the Actual Price	** Dollar Volume of DBE Subcontractor	\$
Agreed Upon by the Prime Contractor and the DBE subcontractor,		_____
and these prices will be used to determine the percentage of the		_____
DBE	Percentage of Total Contract Bid Price	%
participation in the contract.		

** Must have entry even if figure to be entered is zero.

This form must be completed in order for the Bid to be considered responsive and be publicly read.

APPENDIX E



SIGNATURE SHEETS AND DEBARMENT CERTIFICATIONS

CONTRACT: ER 5100 EA

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**EXECUTION OF BID, NONCOLLUSION AFFIDAVIT AND DEBARMENT
CERTIFICATION**

The person executing the bid, on behalf of the Bidder, being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee of the bidder has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with this bid, and that the Bidder intends to do the work with its own bonafide employees or subcontractors and is not bidding for the benefit of another contractor.

In addition, execution of this bid in the proper manner also constitutes the Bidder's certification of "Status" under penalty of perjury under the laws of the United States in accordance with the Debarment Certification included elsewhere in the proposal form, provided that the Debarment Certification also includes any required statements concerning exceptions that are applicable.

SIGNATURE OF CONTRACTOR

(If a corporation uses this sheet)

(Print full name of corporation)

(Address as Prequalified)

Attest _____

By _____	(Secretary)	(Assistant
Secretary)	(President)	Delete
inappropriate title	(Vice President)	
	(Asst. Vice President)	
	Delete inappropriate title	

Print Signer's Name

Print Signer's Name

CORPORATE SEAL

NOTE - AFFIDAVIT MUST BE NOTARIZED

Subscribed and sworn to before me this

the ____ day of _____, 20____.

(Signature of Notary Public)

NOTARY SEAL:

of _____ County.

State of _____.

My Commission Expires: _____

Signature Sheet 1 (Bid) -Corporation

**EXECUTION OF BID, NONCOLLUSION AFFIDAVIT, AND DEBARMENT
CERTIFICATION**

The person executing the bid, on behalf of the Bidder, being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee of the bidder has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with this bid, and that the Bidder intends to do the work with its own bonafide employees or subcontractors and is not bidding for the benefit of another contractor.

In addition, execution of this bid in the proper manner also constitutes the Bidder's certification of "Status" under penalty of perjury under the laws of the United States in accordance with the Debarment Certification included elsewhere in the proposal form, provided that the Debarment Certification also includes any required statements concerning exceptions that are applicable.

SIGNATURE OF CONTRACTOR

(If a joint venture, use this sheet)

Instructions to Bidders: On Line (1), print the name of each contractor. On Line (2), print the name of one of the joint venturers and execute below in the appropriate manner and furnish in the following lines all information required by Article 102-8 of the Specifications. On Line (3), print the name of the other joint venturer and execute below in the appropriate manner and furnish all information required by said article of the Specifications. For correct form of execution and information required for execution of this sheet by an individual, see Signature Sheets 3 and 4; for a corporation, see Signature Sheet 1; and for a partnership, see Signature Sheet 5.

(1) _____ and _____
A Joint Venture

(2) _____ (Seal)
(Name of Contractor)

_____ By _____
Witness or Attest

_____ Print Signer's Name _____ Print Signer's Name
If a corporation, affix corporate seal:

And (3) _____ (Seal)
(Name of Contractor)

(Address as Prequalified)

_____ By _____
Witness or Attest

_____ Print Signer's Name _____ Print Signer's Name
If a corporation, affix corporate seal:

**NOTE - AFFIDAVIT MUST BE NOTARIZED For Line (2)
For Line (3)**

NOTE - AFFIDAVIT MUST BE NOTARIZED

Subscribed and sworn to before me

Subscribed and sworn to before me

this the _____ day of _____, 20_____.

this the _____ day of _____, 20_____.

(Signature of Notary Public & Seal)

(Signature of Notary Public & Seal)

of _____ County.

of _____ County.

State of _____.

State of _____.

My Commission Expires: _____

My Commission

Expires _____.

Signature Sheet 2 (Bid) -Joint Venture

**EXECUTION OF BID, NONCOLLUSION AFFIDAVIT, AND DEBARMENT
CERTIFICATION**

The person executing the bid, on behalf of the Bidder, being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee of the bidder has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with this bid, and that the Bidder intends to do the work with its own bonafide employees or subcontractors and is not bidding for the benefit of another contractor.

In addition, execution of this bid in the proper manner also constitutes the Bidder's certification of "Status" under penalty of perjury under the laws of the United States in accordance with the Debarment Certification included elsewhere in the proposal form, provided that the Debarment Certification also includes any required statements concerning exceptions that are applicable.

SIGNATURE OF CONTRACTOR (If an individual doing business under a firm name, use this sheet)

Name of Contractor _____ trading (Print individual name)

Witness and doing business as _____
_____ (Print firm name) Print Signer's Name

_____ (Address as Prequalified)

Signature of Contractor _____ (Individually)

_____ Print Signer's Name **NOTE - AFFIDAVIT MUST BE**

NOTARIZED Subscribed and sworn to before me this the **NOTARY SEAL** _____ day of
_____, 20____.

(Signature of Notary Public) of _____ County. State of

_____. My Commission Expires: _____ Signature

Sheet 3 (Bid) - **INDIVIDUAL WITH FIRM NAME**

EXECUTION OF BID, NONCOLLUSION AFFIDAVIT, AND DEBARMENT CERTIFICATION

The person executing the bid, on behalf of the Bidder, being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee of the bidder has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with this bid, and that the Bidder intends to do the work with its own bonafide employees or subcontractors and is not bidding for the benefit of another contractor.

In addition, execution of this bid in the proper manner also constitutes the Bidder's certification of "Status" under penalty of perjury under the laws of the United States in accordance with the Debarment Certification included elsewhere in the proposal form, provided that the Debarment Certification also includes any required statements concerning exceptions that are applicable.

SIGNATURE OF CONTRACTOR (If an individual doing business in his own name, use this sheet)

Name of Contractor _____ (Print)

_____ (Address as Prequalified)

Witness Contractor _____ Signature of
(Individually)

Print Signer's Name _____ Print Signer's Name

NOTE - AFFIDAVIT MUST BE NOTARIZED

Subscribed and sworn to before me this the NOTARY SEAL _____ day of _____, 20____.

(Signature of Notary Public)

of _____ County.

State of _____.

My Commission Expires: _____

Signature Sheet 4 (Bid) - Individual Name

**EXECUTION OF BID, NONCOLLUSION AFFIDAVIT, AND DEBARMENT
CERTIFICATION**

The person executing the bid, on behalf of the Bidder, being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee of the bidder has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with this bid, and that the bidder intends to do the work with its own bonafide employees or subcontractors and is not bidding for the benefit of another contractor.

In addition, execution of this bid in the proper manner also constitutes the bidder's certification of "Status" under penalty of perjury under the laws of the United States in accordance with the Debarment Certification included elsewhere in the proposal form, provided that the Debarment Certification also includes any required statements concerning exceptions that are applicable.

SIGNATURE OF CONTRACTOR (If a partnership, use this sheet)

(Print Name of Partnership)

(Address as Prequalified)

By _____ Witness Partner

Print Signer's Name Print Signer's Name

NOTE - AFFIDAVIT MUST BE NOTARIZED

Subscribed and sworn to before me this the NOTARY SEAL day of _____, 20_____.

(Signature of Notary Public) of _____ County. State of

_____. My Commission Expires: _____

Signature Sheet 5 (Bid) -Partnership

**EXECUTION OF BID, NONCOLLUSION AFFIDAVIT, AND DEBARMENT
CERTIFICATION**

The person executing the bid, on behalf of the Bidder, being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee of the bidder has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with this bid, and that the Bidder intends to do the work with its own bonafide employees or subcontractors and is not bidding for the benefit of another contractor.

In addition, execution of this bid in the proper manner also constitutes the Bidder's certification of "Status" under penalty of perjury under the laws of the United States in accordance with the Debarment Certification included elsewhere in the proposal form, provided that the Debarment Certification also includes any required statements concerning exceptions that are applicable.

SIGNATURE OF CONTRACTOR (Limited Liability Company, use this sheet)

Name of Contractor _____ (Print firm name)

(Address as Prequalified)

Signature of Manager _____ (Individually)

Print Signer's Name

NOTE - AFFIDAVIT MUST BE NOTARIZED Subscribed and sworn to before me this the _____ day of _____, 20____. **NOTARY SEAL**

(Signature of Notary Public) of _____ County. State of

_____. My Commission Expires: _____

Signature Sheet 6 (Bid) -LIMITED LIABILITY COMPANY

Contract No:

OWNER: CITY OF DURHAM

By.....
CITY MANAGER or
DEPUTY CITY MANAGER

(CORPORATE SEAL)

Attest.....
CITY CLERK

COUNTY of

I, a Notary Public in and for the aforesaid County and State certify that

.....
personally appeared before me this day, and acknowledged that he or she is the City
Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act
of
the City, the foregoing contract or agreement was signed in its corporate name by its

.....
City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk.
This the day of, 20.....

.....
Notary Public

My commission expires:

.....

Signature Sheet 7 (Bid - Acceptance by City)

DEBARMENT CERTIFICATION OF BIDDERS

Instructions & conditions for certification

1. By signing and submitting this proposal, the bidder is providing the certification set out below.
2. The inability of a bidder to provide the certification required below will not necessarily result in denial of participation in this contract. If the certification is not provided, the bidder must submit an explanation (exception) of why it cannot provide the certification set out below. The certification or explanation (exception) will be considered in connection with the Department's determination whether to award the contract. However, failure of the prospective bidder to furnish a certification or an explanation (exception) may be grounds for rejection of the bid.
3. The certification in this provision is a material representation of fact upon which reliance is placed when the City determines whether or not to award the contract. If it is later determined that the bidder knowingly rendered an erroneous certification, in addition to other remedies available to the City may terminate this contract for cause of default.
4. The prospective bidder shall provide immediate written notice to the City if at any time the bidder learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this provision, have the meanings set out in the Definitions and Coverage sections of the rules implementing *Executive Order 12540*. A copy of the Federal Rules requiring this certification and detailing the definitions and coverages may be obtained from the City.
6. The bidder agrees by submitting this bid that, should the contract be awarded, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this contract, unless authorized by the City.
7. The prospective bidder further agrees by submitting this proposal that it will include the Federal-Aid Provision titled "Required Contract Provisions Federal-Aid Construction Contract" (Form FHWA PR 1273) provided by the Department, without subsequent modification, in all lower tier covered transactions.
8. The prospective bidder may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this provision. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if the successful bidder knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the City may terminate this transaction for cause of default.

DEBARMENT CERTIFICATION

The bidder certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records; making false statements; or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph b. of this certification; and
 - d. Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State or local)
- Where the prospective bidder is unable to certify to any of the statements in this certification, it shall attach an explanation to this proposal.

IF AN EXPLANATION, AS PROVIDED IN THE ABOVE DEBARMENT CERTIFICATION, HAS BEEN ATTACHED TO THE PROPOSAL, PLEASE CHECK THE BOX SHOWN BELOW:

An explanation has been attached to the proposal.

APPENDIX F

BID BOND FORMS CONTRACT: ER 5100 EA



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APPENDIX F

BID BOND for the City of Durham

Contract name and number or other description of the Contract:


Name of Bidder:

Name, address, and telephone number of Surety's N. C. Resident Agent:


Telephone number of Surety's home office:

Surety is a corporation organized and existing pursuant to the laws of the State of:

Amount of this bond: *check one:*

 *(write or type the amount in words and figures)* All numbers in this section are in U. S. dollars.

(\$)

 five percent of the amount of the proposal

Date of execution of this bond:

Obligee: CITY OF DURHAM, a North Carolina municipal corporation.

* * * * *

KNOW ALL PERSONS BY THESE PRESENTS, that the Surety executing this bond, which Surety is duly licensed to act as surety in North Carolina, is held and firmly bound unto the City of Durham, Obligee, in the penal sum of the amount stated above, for the payment of which sum, well and truly to be made, the Surety binds itself and its successors and assigns, jointly and severally, by these presents. Whereas the Bidder is herewith submitting a proposal for the Contract referred to above, and the Bidder desires to file this Bid Bond in lieu of making the cash deposit pursuant to G.S. 143-129; NOW THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION is such, that if the Bidder shall be awarded the contract for which the bond is submitted, and shall, within ten days after the award is made, execute and deliver to the Obligee the contract and give satisfactory surety as required by G.S. 143-129, then this obligation shall be null and void, otherwise to remain in full force and virtue; and if the Bidder fails or refuses to so execute and deliver said contract or give said satisfactory surety, the Surety shall upon demand forthwith pay to the Obligee the full penal sum of this bond. The Surety waives all extensions of time, and notice of extensions of time, for the opening of proposals and for the modification, award, execution, and delivery of the contract. IN WITNESS WHEREOF, the Surety has executed this instrument under its seal as of the date of execution indicated above, pursuant to authority of its governing body.

(name of Surety)

(signature of Surety's attorney in fact) (Affix Surety's corporate seal.)

(Instructions to Surety: If you use a raised corporate seal, press hard enough to make it legible) Bid Bond Page 1 RNW:071301

APPENDIX F

ACKNOWLEDGMENT OF SURETY'S EXECUTION OF BID BOND

State of _____ County of _____

I, _____, a notary public in and for said county and state,
certify that _____ personally appeared before me this
day and acknowledged that he or she is Attorney in Fact for

_____, the
Surety named in the foregoing Bid Bond, in which bond the Obligee is the City of Durham, and that
he or she executed said bond, under the seal of the Surety, on behalf of the Surety.

This the _____ day of _____, 20_____.

My commission expires: _____

Notary Public

Bid Bond Page 2 RNW:071301

APPENDIX G

PERFORMANCE BOND AND PAYMENT BOND FORMS

CONTRACT: ER 5100 EA

DURHAM



1869
CITY OF MEDICINE

APPENDIX G

PERFORMANCE BOND AND PAYMENT BOND

Date of Contract: _____

Contract Name and Number: _____

Name of Principal (Name of Contractor): _____

Name of Surety: _____

Name and Address of Surety's NC Resident Agent: _____

Contracting Body: CITY OF DURHAM, a North Carolina municipal corporation

Amount of Performance Bond (in words and figures): _____

_____dollars (\$_____)

Amount of Payment Bond: same dollar amount as the dollar amount of Performance Bond.

Date of Execution of these Bonds: _____

* * * * *

KNOW ALL PERSONS BY THESE PRESENTS, that we, the PRINCIPAL AND SURETY above named, are held and firmly bound unto the above named Contracting Body, hereinafter called the Contracting Body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, administrators, and successors, jointly and severally, by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into a certain Contract with the Contracting Body, numbered as shown above and hereto attached:

NOW THEREFORE, if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said Contract during the original term of said Contract and any extensions thereof that may be granted by the Contracting Body, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and

APPENDIX G

shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue. As used hereinabove, "modifications" shall include, without limitation, changes (including, without limitation, changes granting extensions of time) and additions to with respect to the Work, scope of work, and specifications.

* * * * *

KNOW ALL PERSONS BY THESE PRESENTS, that we, the PRINCIPAL AND SURETY above named, are held and firmly bound unto the above named Contracting Body, hereinafter called the Contracting Body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into a certain Contract with the Contracting Body, numbered as shown above and hereto attached:

NOW THEREFORE, if the Principal shall promptly make payment to all persons supplying labor and material in the prosecution of the Work provided for in said Contract, and any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue. As used hereinabove, "modifications" shall include, without limitation, changes (including, without limitation, changes granting extensions of time) and additions to or with respect to the Work, scope of work, and specifications.

* * * * *

The Performance Bond and the Payment Bond are being combined here only for purposes of convenience in signing and acknowledging, and the obligations of the Principal and of the Surety are the same as if the bonds were on separate documents. Each bond is in the dollar amount stated above, and the amounts of these bonds are not combined. The Surety agrees that both of these bonds are fully binding on it whether or not the Principal executes these bonds. These bonds are given pursuant to Article 3 of Chapter 44A of the NC General Statutes.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument (for both the Performance Bond and the Payment Bond) under their several seals on the date of execution indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

APPENDIX G

(name of Principal)

ATTEST:

Secretary

By: _____
President

(Affix corporate seal)

(name of Surety)

(name of attorney in fact)

(Affix corporate seal)

(Note: If you use a raised corporate seal, press hard enough to make it legible.)

APPENDIX G

ACKNOWLEDGEMENT OF CONTRACTOR'S EXECUTION OF CONTRACT,
PERFORMANCE BOND, AND PAYMENT BOND

State of _____ County of _____

I, _____, a notary public for the aforesaid county and state, certify that _____ personally appeared before me this day, and acknowledged that he or she is _____ Secretary of _____, a corporation, and that by authority duly given and as the act of the corporation, the foregoing (1) Contract with the City of Durham and (2) Performance Bond and Payment Bond with respect to the Contract, were signed in its name by its _____ President, whose name is _____, sealed with its corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary.

This the ____ day of _____, ____.

NOTARY PUBLIC

My commission expires: _____

ACKNOWLEDGEMENT OF SURETY'S EXECUTION OF
PERFORMANCE BOND, AND PAYMENT BOND

State of _____ County of _____

I, _____, a Notary Public for said county and state, certify that _____, personally appeared before me this day and acknowledged that he or she is Attorney in Fact for _____, the Surety named in the foregoing Performance Bond and Payment Bond, in both of which bonds the contracting body is the City of Durham, and that he or she executed said bonds, under the seal of said Surety, on behalf of said Surety.

This the ____ day of _____, ____.

NOTARY PUBLIC

My commission expires: _____

APPENDIX H



REIMBURSABLE SALES AND USE TAX STATEMENT FORMS

CONTRACT: ER 5100 EA

APPENDIX H

Reimbursable Sales and Use Tax Statement

Payment Application No. _____ Estimate No. _____

Name of Contractor: _____

Project: _____

1. Type of property purchased *	2. Date property purchased	3. Name of vendor	4. Invoice number	5. Date of invoice	6. N. C. county in which purchased **	7. Amount of State sales and use taxes paid	8. Amount of local sales and use taxes paid	9. Total of columns 7 & 8

Grand totals of columns 7, 8, & 9 for all pages of this pay application/estimate. //////////////////////////////////////			
--	--	--	--

Notes: * If the invoice clearly specifies the property for which tax reimbursement is being requested, you need not list the property on this form.

** In column 6, if not purchased in N. C., write *Not in N.C.*

Add extra pages as needed. Total number of pages, including this page, in this request: _____. Do not include invoices in that page count.

In addition to the pages referred to above, invoices that substantiate this statement are attached.

CERTIFICATION: The undersigned individual certifies (1) he or she is an employee or principal of the Contractor that is filing this form with the City to request reimbursement for N. C. State and local sales and use taxes that the Contractor has paid, (2) all of the properties listed above, and on all pages, if any, added to this page, and designated on the attached invoices, are building materials, supplies, fixtures, and equipment that have become or will become a part of or annexed to a building or structure that is owned or leased by the City of Durham and is being erected, altered, or repaired for use by the City of Durham in the project named above, (3) no tax on scaffolding, tools, equipment repair parts, equipment rentals, forms for concrete, or fuel to operate machinery or equipment is included, and (4) all of the information on this form, and on all pages, if any, added to this page, is true.

signature of individual

typed or printed name of individual

Sworn to and subscribed before me, this ____ day of _____, 20____.

022304RW Notary Public

My commission expires:

APPENDIX H

Reimbursable Sales and Use Tax Statement, Continuation page

[illegible]

Enter totals of columns 7, 8, and 9, added to totals from all pages, into page 1. This page is used whether page 1 is signed by the Contractor or the Subcontractor.
022304RW

APPENDIX H

Reimbursable Sales and Use Tax Statement by Subcontractor

This line is to be completed by the Contractor: **Payment Application No.** _____ **Estimate No.** _____

Name of Contractor: _____ **Name of Subcontractor** _____
Project: _____

1. Type of property purchased *	2. Date property purchased	3. Name of vendor	4. Invoice number	5. Date of invoice	6. N. C. county in which purchased.**	7. Amount of State sales and use taxes paid	8. Amount of local sales and use taxes paid	9. Total of columns 7 & 8

Grand totals of columns 7, 8, & 9 for all pages of this pay application/estimate. 			
--	--	--	--

Notes: * If the invoice clearly specifies the property for which tax reimbursement is being requested, you need not list the property on this form.

** In column 6, if not purchased in N. C., write *Not in N.C.*

Add extra pages as needed. Total number of pages, including this page, in this request: _____. ***Do not include invoices in that page count.***

In addition to the pages referred to above, invoices that substantiate this statement are attached.

CERTIFICATION: The undersigned individual certifies (1) he or she is an employee or principal of the Subcontractor that is submitting this form with the Contractor so that the Contractor may request reimbursement for N. C. State and local sales and use taxes that the Subcontractor has paid, (2) all of the properties listed above, and on all pages, if any, added to this page, and designated on the attached invoices, are building materials, supplies, fixtures, and equipment that have become or will become a part of or annexed to a building or structure that is owned or leased by the City of Durham and is being erected, altered, or repaired for use by the City of Durham in the project named above, (3) no tax on scaffolding, tools, equipment repair parts, equipment rentals, forms for concrete, or fuel to operate machinery or equipment is included, and (4) all of the information on this form, and on all pages, if any, added to this page, is true.

signature of individual

typed or printed name of individual

Sworn to and subscribed before me, this _____ day of _____, 20____.

022304RW Notary Public

My commission expires:

APPENDIX I



**SUBMITTAL TRANSMITTAL FORM AND
SUBMITTAL REGISTER FORM CONTRACT:
ER 5100 EA**

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CONTRACT: ER -5100 EA
2010 STREETSCAPE REPLACEMENT

URBAN FORESTRY DIVISION
DEPARTMENT OF GENERAL SERVICES
CITY OF DURHAM, NORTH CAROLINA

SUBMITTAL TRANSMITTAL FORM

Attention: City of Durham –
Department of General services Urban Forestry Division
2011 Fay St. City Durham, North Carolina 27704

CONTRACTOR SHALL COMPLETE THIS SECTION:

Transmittal No.: Date of Submittal:

..... Re-submittal: Yes No Description:

.....

Drawing No.: Specification Section:

..... Submittal Classification: Submittal

Code:

Subcontractor:

Supplier:

Contractor's Certification:

The review, approval, verification of products required, field dimensions, adjacent construction Work, and coordination of information is in accordance with the requirements of the Work and Contract Documents.

..... (Contractor Submittal Manager Signature)

(Seal)

ARBORIST / CITY OF DURHAM SHALL COMPLETE THIS SECTION

Date of Receipt.....

..... Approved by Arborist(AA) Approved by City (AC) No exceptions noted.

..... Approved by Arborist (AAC) Approved by City (ACC) With corrections as noted on the submittal data or attachments, re-submittal not required.

..... Disapproved by Arborist (DA) Disapproved by City (DC) Re-submittal required.

Date of Review/Approval: Comments:

.....

..... (Arborist/City Signature)

(Seal)

SUBMITTAL REGISTER

[illegible]

APPENDIX J

CONTRACT: ER 5100 EA
DURHAM



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CONTRACT AND PROJECT MANAGEMENT SYSTEM - REQUIREMENTS AND WORKFLOW

Software Overview and Computer Requirements The Contract will make extensive use of emailed scanned forms, spreadsheets and verbal communication.

It will be the Contractor's responsibility to provide the appropriate computers, digital cameras, scanner and telecommunication equipment and any and all related and necessary peripherals for this use. The computers should have Windows XP Service Pack 2, installed as an operating system, along with Windows Internet Explorer Version 7 browser for web access. City staff will be available for technical advice. However, the City staff will not operate, install, or troubleshoot any of the Contractor's hardware or software issues. The Contractor is solely responsible for the functionality of their computer systems. The City will accept no liabilities arising from the Contractor's use of this software.

Project Schedule Upon award of the Contract, the Contractor will receive a Notice to Proceed to develop a comprehensive Schedule. Subsequent to completion and City approval of the Schedule, the Contractor will receive a Notice to Proceed for Construction. No site work shall commence without receiving the Notice to Proceed for Construction from the City.

Prior to preparation of the Schedule, the Contractor shall provide a proposed Organization Breakdown Structure (OBS) and Work Breakdown Structure (WBS) to the City for review, comment and approval. The WBS shall reflect the each of the Contract pay items in the bid proposal.

The WBS and overall project schedule shall be the basis for periodic updates of the project schedule as the work is completed. The Contractor is responsible for periodic updates to the Schedule as determined by the City at the time of the pre-construction meeting.

APPENDIX J

Contract Manager Setup

Daily Report Work Flow, Review and Approval Process The Contractor is responsible for sending daily reports to the Arborist on the next business day following the work performed. The daily reports will be logged individually by the Arborist to track the project.

The Contractor shall assign the “ball-in-court” status for the review and approval of each daily report to the City Inspector assigned to the project. The City Inspector shall review the daily report the following business day and either approve it if satisfactory, or assign the “ball-in-court” back to the Contractor with notes indicating the areas of disagreement. The Contractor and City Inspector shall work together to come to an agreement on the daily report so that it can be approved prior to the payment process described below.

The Contractor shall use Telephone Logs to document important phone calls pertaining to project activities. The Contractor shall electronically attach any pertinent documents, drawings, or photos to emails to the Arborist.

APPENDIX J

Payment Requisition Process All payment requisition(s) shall be prepared referencing quantities from (each of) the daily reports for the period that the requisition is being prepared for. It is important that the daily reports are entered correctly and approved on a timely basis to avoid delay in the payment requisition process. Payment requisitions will not be approved unless they are created using this process.

Once the Contractor has prepared a payment requisition, the “ball-in-court” shall be assigned to the City Inspector for review and approval. The City Inspector shall review the payment requisition in the following business days and either approve it if satisfactory or assign the “ball-in-court” status back to the Contractor with notes which indicate the areas of disagreement. The Contractor and City Inspector shall work together to come to an agreement on the contents of the payment requisition.

Once the payment requisition(s) for the project(s) worked on during a billing period are approved, the Contractor shall print them on their appropriate billing form(s). The Contractor shall summarize them into a cover sheet, and incorporate all of the forms into the payment request package which includes other the forms and certificates as described in these contract documents.

Issues, Photographs and Project Correspondence the Arborist and the Contractor shall both retain all digital correspondence generated during this project.

APPENDIX K

Construction Details CONTRACT: ER 5100 EA



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DURHAM

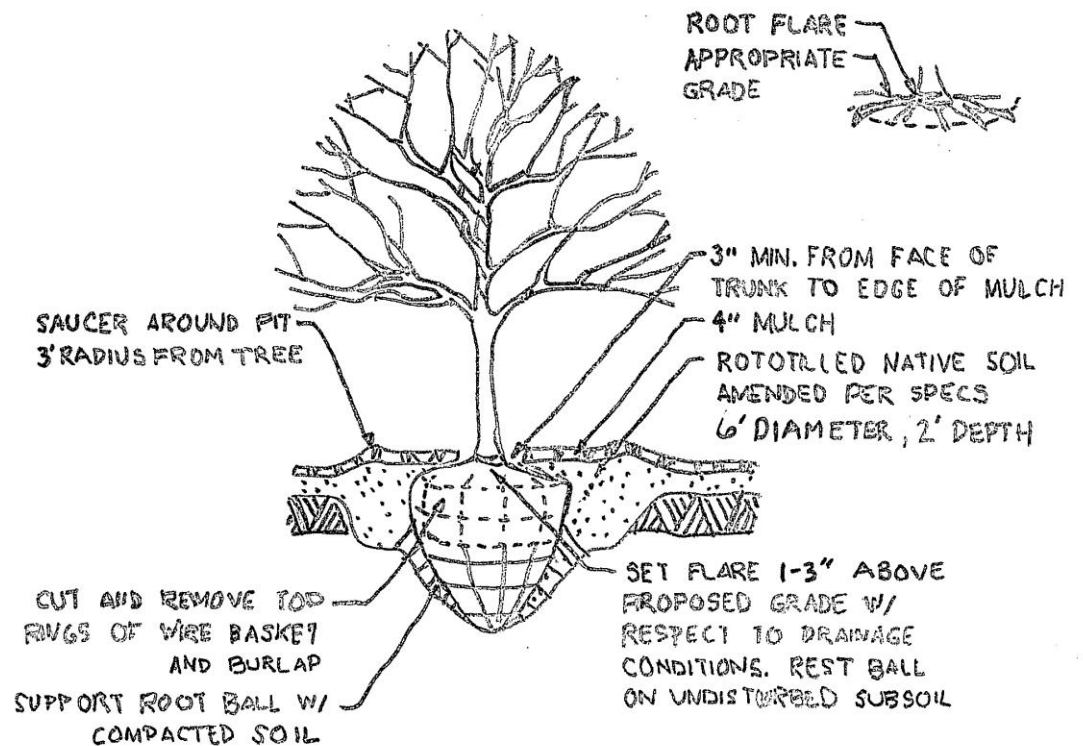


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CITY OF MEDICINE

CITY OF DURHAM

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TREE PLANTING